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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1048

THE TEXAS COMPANY (P. R.) INC.,
(Texaco Puerto Rico, Inc.),
ESSO STANDARD OIL COMPANY (P. R.) and
ESSO STANDARD S. A. LTD.,
Petitioners,

v.

THE SECRETARY OF THE TREASURY
OF PUERTO RICO,
Respondent.

JURISDICTIONAL STATEMENT

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THE SECRETARY OF THE TREASURY
OF PUERTO RICO,
Respondent.

JURISDICTIONAL STATEMENT

NOW COME The Texas Company (P. R.) Inc., (Texaco Puerto Rico Inc.), Esso Standard Oil Company (P. R.) and Esso Standard S. A. Ltd., in the above styled and numbered case, through their undersigned attorneys and respectfully submit the following statement of jurisdiction complying with Section 13(2) and 15 of this Honorable Court:

Opinions Delivered by Courts Below

This case is an appeal from the Supreme Court of the Commonwealth of Puerto Rico. This case originated in the Superior Court of Puerto Rico, San Juan Part, questioning the jurisdiction of the Commonwealth of Puerto Rico to impose and collect taxes on personal property owned by Appellants, but located within land belonging to the United States, which were expropriated by the Federal Government in 1942 and leased to Appellants in 1947 and over which the United States had obtained exclusive jurisdiction. The Superior Court, San Juan Part, rendered on January 4, 1963 a judgment[1] sustaining the jurisdiction of the local government to impose such taxes. On January 31, 1963 a motion for reconsideration was filed before said Court, which motion was denied by an order of March 19, 1963.[2]

A petition for review was filed in the Supreme Court of Puerto Rico on April 18, 1963. On June 18, 1963 the Court denied the review without rendering an opinion.[3] A motion for reconsideration was filed on November 24, 1963. Such motion was denied on June 27, 1963 again without opinion.[4]

Those are the judgments, orders and decrees rendered by the local courts of which is appealed now.

Jurisdictional Grounds for Appeal

In this case is drawn in question the validity of a Law of February 16, 1903, enacted by the Legislature of Puerto

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[1] Appellants App., (page 16, Judgment Superior Ct. San Juan Part, Jan. 4, 1963.)

[2] Appellants App., (page 20, Resolution of Superior Court, San Juan Part, March 19, 1963.)

[3] Appellants App., (page 22, Resolution Supreme Court of P.R. dated June 18, 1963.)

[4] Appellants App., (page 23, Resolution Supreme Court of P.R. November 24, 1963.)

Rico, either repugnant to the territorial clause of the Federal Constitution (Article 4, Sect. 3, second paragraph of the U. S. Constitution) or, as interpreted by the Supreme Court of Puerto Rico, repugnant to the Due Process Clause of the Federal Constitution (Fifth or Fourteenth Amendments Federal Constitution).

The action brought is a normal civil action against the Treasurer of Puerto Rico requesting the refund, or contesting the payment, of taxes improperly collected or imposed. The judgment or decree of the Supreme Court of Puerto Rico, sought to be reviewed is dated June 18, 1963 and the order denying the motion for reconsideration filed is dated November 24, 1963.

The Notice of Appeal was filed before the Supreme Court of Puerto Rico on December 13, 1963.

The jurisdiction of this Honorable Court is invoked under 28 U.S.C.A., Sect. 1258(2). It has been decided many times by this Honorable Court in cases in which States were involved and in accordance with Section 1257(2) of Title 28 of U.S.C.A. that there is jurisdiction for this Court to entertain an appeal whenever is drawn in question the validity of a statute of the state on the ground of its being repugnant to the Constitution of the United States and the decision is in favor of its validity. The citation of cases in this regard, we believe, is unnecessary. It is also a very well known rule that those who are adversely affected by the State statute have standing to question its constitutionality. (*Local Union No. 193, United Brothers of Carpenters and Joiners of America* v. *McAdory*, Ala. 1945, 65 S. Ct. 1384, 325 U. S. 450, 89 L. Ed. 1725; also see cases cited under note 10, 28 U.S.C.A., Section 1257).

Questions Presented

The questions of law presented in this appeal are the following:

1. Whether the United States Government acquired exclusive jurisdiction upon condemning the land (on which the property levied is located) in the Island of Puerto Rico on March 3, 1942 by that fact alone and independently of any local law, and whether the Act of February 16, 1903, approved by the Legislature of Puerto Rico, insofar as it imposes restrictions and limits said jurisdiction, is unconstitutional as violating the territorial clause of the Federal Constitution (Article 4, Section 3, paragraph second of the United States Constitution).

2. Whether upon deciding that the foregoing is not correct, and then considering that the aforesaid Act of February 16, 1903, approved by the Legislature of Puerto Rico, granted exclusive jurisdiction to the United States Government over land acquired in Puerto Rico, then it is proper to determine whether in the present case the exclusive jurisdiction of the Federal Government was lost by the mere fact of leasing the condemned land to the appellant oil companies and whether the determination to that end made by the Supreme Court of Puerto Rico in the case of *P. R. Drydock & Marine Terminals Inc.* v. *Secretary of the Treasury of Puerto Rico* on May 17, 1961, violates the Due Process of Law clause of the Constitution of the United States.

3. The third question raised is that, considering that the United States at the time the tax was levied in the present case had exclusive jurisdiction over the land on which the property of appellants was located, whether the Federal Government consented to the imposition and collection by the local government of the tax here in issue.

Statement of the Case

Dated March 3, 1942 the United States of America acquired some property (180.14 acres of land, later known as the "Catano Terminal") privately owned by Mr. Celestino Iriarte and others, in the Municipality of Guaynabo, Puerto Rico, by virtue of expropriation procedures followed in the United States District Court for Puerto Rico, for the establishment of fuel storage facilities.[5] Sometime after the expropriation aforementioned, the Federal Naval Authorities notified the local government of their exclusive jurisdiction over that area of land.

On July 2, 1947 the United States Government leased this land to the Esso Standard Oil Company (Puerto Rico), the Texas Company (P. R.) Inc. and the Shell Co. (P. R.) Ltd.[6] This contract was supplemented by another on March 29, 1948.[7] On August 31, 1954 Esso Standard Oil Co. (P. R.), with the consent of the United States Naval authorities, subleased to Tropical Gas Co., Inc. part of the land at the Catano Terminal that it had occupied, by virtue of the before mentioned lease, from the Government of the United States. The purpose of this lease as recited therein, was to permit a better maintenance of the facilities, but such facilities could be retaken by the federal government at any moment if the national defense so required.

Later on, the government of Puerto Rico, *in a prior case to this* but involving the same parties (*Treasurer of Puerto Rico* v. *Esso Standard Oil Co., et als*)[8] imposed

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[5] Appellants App., (page 24, Judgment of the District Court of the United States for Puerto Rico, of March 3, 1942 in case 2453 and Declaration of Taking in same case and court.)

[6] Appellants App., (page 40, Lease Contract of July 2, 1947).

[7] Appellants App., (page 54, Supplementary Agreement of March 29, 1948.)

[8] *The Secretary of the Treasury of Puerto Rico* v. *Esso Standard Oil Co. (P.R.) Et al.*, case No. 6101, before the First Circuit Court of Appeals.

and tried to collect taxes on personal property owned by the petroleum companies but located within that area of land belonging to the United States which had been leased to them, and over which the federal government had obtained exclusive jurisdiction. The Supreme Court of Puerto Rico upheld the position of the petroleum companies. The government of Puerto Rico argued that such exclusive jurisdiction was obtained by the United States pursuant to a local law of February 16, 1903[9] which provided that the United States would obtain the exclusive jurisdiction over any land acquired in Puerto Rico by purchase, expropriation, etc.

That same law stated at the end of its fifth paragraph the following:

> ". . . provided, however, that upon the subsequent *alienation* by the United States of any land so acquired the People of Puerto Rico shall again have jurisdiction thereof." (Italics ours)

Based on this statement the Treasurer of Puerto Rico argued that by leasing the land to the petroleum companies the United States *alienated* the property and lost its exclusive jurisdiction. The case came originally before our Supreme Court and pursuant to a decision rendered on May 17, 1961 in the very similar case of *P. R. Drydock & Marine Terminals Inc.* v. *Secretary of the Treasury of Puerto Rico*[10] the Supreme Court of Puerto Rico upheld the position of the petroleum companies deciding that according to the prevailing Spanish Civil Law Doctrine, as expressed by its best known commentators, a lease is not an alienation of the property right. Then the case was

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[9] Appellants App., (page 58, Law of 1903, English text)

[10] Appellants App., (page 63, *P.R. Drydock & Marine Terminal case*, Judgment of May 17, 1961.)

appealed to the First Circuit Court of Appeals of Boston by the Treasurer of Puerto Rico which case was recently argued before that Honorable Court and is pending a decision in the near future.

Surprisingly, however, the Treasurer of Puerto Rico did not appeal the decision in the aforementioned case of *P. R. Drydock & Marine Terminal Inc.* but filed a motion for reconsideration before the same Supreme Court of Puerto Rico. It based said motion on the fact that the law of February 16, 1903 was *signed* by a continental governor so it had to be interpreted in English, arguing them that the meaning and scope of the word alienation had to be determined not according to the Spanish Civil Law Doctrine and commentators, but according to what continental Common Law Courts had decided. Based on this argument the Supreme Court of Puerto Rico rendered on June 22, 1962, a decision on reconsideration in the aforementioned *P. R. Drydock & Marine Terminal Inc.* case.[11] It was decided that the law had to be interpreted in English and that according to the continental Common Law Court decisions, a lease was an *alienation* of the property right. So, that by leasing the land to the petroleum companies the United States Government lost its exclusive jurisdiction which reverted to the local government. In deciding this the Supreme Court overlooked (at least did not even mention) Section 13 of the Civil Code of Puerto Rico which establishes a completely different rule for determining the language which will prevail in the interpretation of a law. That section of law establishes that:

> "In case of discrepancy between the English and Spanish texts of a statute passed by the Legislature Assembly of Puerto Rico, the text in which the same

[11] Appellants App., (page 77, *P.R. Drydock & Marine Terminal case*, Judgment on Reconsideration of June 22, 1962.)

originated in either house, shall prevail in the construction of said statute, except in the following cases: (a) If the statute is a translation or adaptation of a statute of the United States or of any State or Territory thereof, the English text shall be given preference over the Spanish. (b) If the statute is of Spanish origin, the Spanish text shall be preferred to the English. (c) If the matter of preference cannot be decided under the foregoing rules, the Spanish text shall prevail".

We have then that an investigation of the record of the Department of State of Puerto Rico showed that law of February 16, 1903 was introduced originally in the House of Delegates, as Bill No. 59 of the House, in both languages, that is in Spanish and English.[12] This was so because the Legislature of Puerto Rico at that time was composed of Continental and Portorican members. So we have that is applicable the last part of the before copied Article 13 of our Civil Code which states that "*if the matter of preference cannot be decided under the foregoing rule the Spanish text shall prevail.*"

It is a very well known rule of Civil Law that a court cannot disregard the written law in deciding a case. Doing so, in our opinion, *was a violation of due process of law.*

However, going on with our case we have that the case now before this Honorable Court involves the same situation of facts than the case of *Secretary of the Treasury of Puerto Rico* v. *Esso Standard Oil Co., et als*, before mentioned and now pending decision before the First Circuit Court of Appeals of Boston, except that it refers to subsequent tax years.

In the present case the Superior Court of Puerto Rico,

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[12] Appellants App., (pages 58 and 85, Law of 1903—English text and Spanish text).

San Juan Part, based on the reconsideration judgment rendered on the above referred case of *P. R. Drydock & Marine Terminals Inc.*, sustained the jurisdiction of the local government to impose and collect the taxes. A motion for reconsideration was filed, but a decision was delivered confirming the original judgment. However, by the wording of the opinions rendered by the Superior Court of San Juan in our case (both, the original and the one on reconsideration)[13] it is apparent that the court overlooked the constitutional question regarding the jurisdiction over the land, resting only in a matter of immunity of federal property which obviously does not extend to property belonging to private or particular persons. A review was taken to the Supreme Court of Puerto Rico from the decision but it was denied without opinion.

On June 27, 1963 a motion for reconsideration was filed before the Supreme Court of Puerto Rico requesting that Honorable Court to set aside the before mentioned denial of review, since a substantial and very important constitutional question was involved. The review was requested, to be considered as an appeal in which case an opinion was compulsory. It was argued by Appellants that even when they had not been expressly pointed out, there were constitutional matters involved in this case from its very beginning and an entertainment of the motion by the Supreme Court was necessary. In that Motion we contended that the mere expropriation of the land by the United States Government in 1942 conveyed exclusive jurisdiction to the federal government since at that time Puerto Rico was undoubtedly a territory of the United States, and that any local law restricting or limiting such jurisdiction is unconstitutional since it is a limitation to

[13] Appellants App., (pages 16 and 20, Judgment Superior Court, San Juan Part, of January 4, 1963, and Judgment of same court, of March 19, 1963.)

the broad powers of the United States Congress under the territorial clause of the constitution. A comparison was made between the relation of a state to a municipality with the relation of the Federal Government to a territory. In the absence of specific constitutional limitations the state has an absolute power over municipalities (37 Am. Jur. Section 35, p. 652, 37 Am. Jur., Section 92, p. 701, 62 Corpus Juris Secundum, Section 48, p. 139). Such is the power of the Federal Government over its territories. (*National Bank* v. *County of Yankton*, 110 U.S., 129, 135). When the Federal Government expropriates for its own use some land in a territory it detaches such piece of land and converts it into a "Federal Area" (4 U.S.C.A., Sections 104,-110). Any limitation imposed by the territorial government over such power is unconstitutional (*Irvine* v. *Marshal*, 20 HOW 558, 563, 15 L Ed. 994).

Once more, the Supreme Court of Puerto Rico denied the appeal without opinion. We are now before this Honorable Court of the United States praying an opportunity to be heard.

Substantial Questions Involved

A very substantial question is involved in this case. It is whether personal property belonging to private persons, but located within an area of land owned by the United States and over which the United States has exclusive jurisdiction is subject to a property tax levied by the local government. In the late case of *Offutt Housing Co.* v. *County of Sarpy*, 351 U. S. 253 (1956) interpreting the Military Leasing Act of 1947 (10 U.S.C.A., 2667[e]), it was decided that the *lessee's interest* is subject to be taxed by the state, however neither that case nor any subsequent decision of this Honorable Court has decided the issue herein presented. In none of the decisions of

this Honorable Court is the issue at bar decided, since none of the cases involved State taxation of private property within the boundaries of sites belonging to and under the exclusive jurisdiction of the United States (*U. S.* v. *Detroit*, 355 U. S. 466, 2 L. Ed. 2nd. 424, *Detroit* v. *Murray Corp.*, 355 U. S. 489, 2 L. Ed. 2nd. 421; *U. S.* v. *Township of Muskegon*, 355 U. S. 484, 2 L. Ed. 2nd. 436). It is our contention that the Military Leasing Act cannot be read as to permit local governments to tax private personal property belonging to private persons when located within a "Federal Area", that is, land over which the United States Government has exclusive jurisdiction, and consequently the local government has no jurisdiction whatsoever.

However, preliminary to the before mentioned question, it should be decided whether the United States had, at the moment the tax was imposed, exclusive jurisdiction over the land. We submit that it had such exclusive jurisdiction; that the jurisdiction was acquired by the Federal Government when it expropriated the land in 1942, for the purpose of establishing fuel storage facilities for the Armed Forces, that such jurisdiction is lost only by a total disposal of the land by the United States, but not by merely leasing it to the Appellants with the right to retake at any moment it should be thought necessary, specially considering that the lease was with the purpose of a better maintenance of such facilities by the petroleum companies which have the Know-How for such maintenance and operation. We further contend that the law of the Legislature of Puerto Rico of February 16, 1903, as long as it tends to limit or restrict the federal exclusive jurisdiction, is in violation of the territorial clause of the United States Constitution, which empowers the Congress to exercise its jurisdiction over territories. (*Note that we are limiting the controversy in this case as to the*

"Catano Terminal" which was expropriated in 1942 when Puerto Rico was obviously a territory of the United States. We are not dealing in this case with the Commonwealth status although we submit that the situation would not be different). The government of Puerto Rico, although accepting that the Congress has absolute power over territories, apparently argues that the mere expropriation by itself does not represent a "taking" of jurisdiction by the federal government but that Congress has to expressly so state its intention not only to acquire the land, but the jurisdiction also. Even considering this as a correct statement, Congress has authorized any Head of any Government Department to accept or secure jurisdiction from States whenever considered necessary (40 U.S.C.A. 255). There is no contention in our case that after the expropriation of the land, in 1942, the Naval Authorities in Puerto Rico notified the local government of their jurisdiction over the "Catano Terminal". So we have that in our specific case it was compiled with the requisite of an expression by the Federal Government of its jurisdiction besides the mere expropriation of the land.

This raises a substantial question for this Honorable Court to decide, since if the local government has jurisdiction over the land herein involved, it would seem to have it not only for the purpose of collecting taxes, but the courts of Puerto Rico would have exclusive judicial authority over the area, and the local police would be the only law enforcement agency with authority to maintain order there. So, we would have the abnormal situation of the Federal Government, having in that area property of paramount importance for the national defense, prevented from defending its own property since it is a well known rule that the military should not interfere with the civilian jurisdiction (Posse Comitatus Act, 18 USCA, 1385). Very

easily, as for example, during a strike by employees of any of the Appellants, the governmental property could be in peril of being destroyed. It is of substantial importance for this Honorable Court to clarify once and for all the jurisdiction of the U.S. in areas over which exclusive jurisdiction has been obtained and the federal government has not demonstrated its interest or intention of transferring or losing such exclusive jurisdiction.

This substantial question is not destroyed by the argument that it would have an adverse effect on the tax revenue to be collected by the local government since this Honorable Court has already established in the case of *Oklahoma ex rel Phillip* v. *Guy F. Atkinson*, 313 U. S. 508, 534, that the possible adverse effect on the tax revenue of a state as a result of the exercise by the Federal Government of its power of eminent domain is no barrier to the exercise of such power. Besides, the Congress has authorized some types of taxation by local governments within "Federal Areas" (Taxes on sale of gasoline, sales or use tax and income tax; Buck Act, 4 U.S.C.A., Sect. 103, 110).

The constitutional question in this case was expressly pointed out in the motion for reconsideration which was denied without opinion by the Supreme Court of Puerto Rico. We are aware that this Honorable Court has repeatedly decided that if the federal question is raised in reconsideration before the highest state court and it does not entertain the petition, there is no federal ground for the U.S. Supreme Court to review the case. [*Hartford Insurance Co.* v. *Johnson*, 249 U.S. 490, 493, 39 Sup. Court. 336 (1919); *Radio Station WOW* v. *Johnson*, 326 U.S. 120, 128, 65 Sup. Ct. 1475, 1480; *Robertson & Kirkham*, Sect. 75]. However, it also has been decided by this Honorable Court that the state court decision should not be rendered with the idea of defeating the claim of federal right. In

the case of *Hartford Life Ins. Co.* v. *Johnson*, supra, it is stated at page 493:

> "... and upon the question whether or not such claim has been so asserted the decision of the state court is binding upon this court, *when it is clear*, as it is in this case, *that such decision is not rendered in a spirit of evasion for the purpose of defeating the claim of federal right*." (Italics ours)

See also, *Central Vermont Railway Co.* v. *White*, 238 U.S. 507; *John, Guardian* v. *Paullin*, 231 U.S. 583; *Erie R.R. Co.* v. *Purdy*, 185 U.S. 148.

Considering the fact that this same issue is submitted to the consideration and decision of the First Circuit Court of Boston in an identical case and considering finally the substantial federal question raised and the importance of the decision in this case, we are compelled to conclude that the Supreme Court of Puerto Rico is not entertaining the motion for reconsideration, purposely defeated the federal right claimed, which refusal to entertain was highly and extremely prejudicial to Appellants interest and against the balance of equity and justice. By this, the Supreme Court of Puerto Rico, practically attempted to defeat the opportunity of Appellants to be heard on the constitutional question. Now we pray from this Honorable Supreme Court of the United States a reasonable opportunity to defend our points of view in order to clarify once and for all questions of federal jurisdiction under the Constitution of the United States which go beyond the particular case at bar to rest within the field of public interest. The substantial character of the questions presented merits a consideration by this Honorable Court of same.

Therefore, Appellants pray this Honorable Supreme Court of the United States to grant the Petition for Appeal in this case and permit them to file a legal brief discussing all Constitutional Questions involved herein.

San Juan, Puerto Rico, this 4th day of April, 1964.

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IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

Civil Nos., 58-3224
and 57-1962
Civil Nos., 57-1961; 61-3504;
62-4062; 57-5703; 60-2963;
60-3001; 59-6567; 58-3050
Civil Nos., 61-4975; 57-3052;
59-1878; 59-1877; 60-6418;
61-4201; 61-4976
Property Taxes

THE TEXAS COMPANY (PR) INC., et als,
Plaintiff.

v.

SECRETARY OF THE TREASURY,
Defendant.

Judgment

The same question is involved in all these cases. May the Commonwealth of Puerto Rico levy taxes on property of the Government of the United States which is leased to the Plaintiff?

This question has been adversely decided to the Appellant. *Puerto Rico Drydock & Marine Terminals, Inc.* v. *Secretary of the Treasury*, No. 12,006, June 22, 1962.

The immunity of the Federal Government from state regulation does not extend beyond the government itself and the governmental functions of its officers and agents. 318 U.S. 749; 283 U.S. 423.

The tax imposed by the Commonwealth Government is levied on the property of the corporation organized under its laws and which it uses for itself, for its own benefit as a private enterprise.

"We may assume also that, in the absence of congressional consent, there is an implied constitutional immunity of the national government from the state taxation and from state regulation of the performance, by federal officers and agencies, of government functions. Ohio v. Thomas, 173 US 276, 43 L. ed. 699, 19 S Ct 453; Johnson v. Maryland, 254 US 51, 65 L ed 126, 41 S Ct 16; Hunt v. United States, 278 US 96, 73 L ed 200, 49 S Ct 38; Arizona v. California, 283 US 423, 75 L ed 1154; 51 S Ct 522. But those who contract to furnish supplies or render services to the government are not such agencies and to not perform governmental functions. Metcalf & Eddy v. Mitchell, 269 US 514, 524, 545, 70 L ed 384, 392, 393, 46 S Ct 172; James v. Dravo Contracting Co., 302 US 134, 149, 82 L ed 155, 166, 58 S Ct 208, 114 ALR 318; Buckstaff Bath House Co. v. McKinley, 308 US 359, 362, 363, 84 L. ed 322, 324, 325, 60 S Ct 279; and cases cited: cf. Susquehanna Power Co. v. State Tax Commission, 283 US 291, 294, 75 L ed 1042, 1045, 51 S Ct 434; Helvering v. Mountain Producers Corp., 303 US 376, 385, 386, 82 L ed 907, 913, 914, 58 S Ct 623, and the mere fact that nondiscriminatory taxation or regulation of the contractor imposes an increased economic burden on the government is no longer regarded as bringing the contractor within any implied immunity of the government from state taxation or regulation. Alabama v. King & Boozer, 314 US 1, 9, 86 L ed 3, 6, 62 S Ct 43, 140 ALR 615, and—(270)—cases cited; Baltimore & A. R. Co. v. Lichtenberg, 176 Md 383, 4 A 2d 734. United States v. Baltimore & A. R. Co., 308 US 525, 84 L ed 444, 60 S Ct 297.

"The trend of our decisions is not to extend governmental immunity from state taxation and regulation beyond the national government itself and

governmental functions performed by its officers and agents. We have recognized that the Constitution presupposes the continued existence of the states functioning in co-ordination with the national government, with authority in the states to lay 'taxes and to regulate their internal affairs and policy', and that state regulation like state taxation inevitably imposes some burdens on the national government of the national government of the same kind as those imposed on citizens of the United States within the state's borders, see Metcalf & Eddy v. Mitchell, supra (269 US 523, 524, 70 L ed 392, 393, 46 S Ct 172). And we have held that those burdens, save as Congress may act to remove them, are to be regarded as the normal incidents of the operation within the same territory of a dual system of government, and that no immunity of the national government from such burdens is to be implied from the Constitution which established the system, see Graves v. New York, 306 US 466, 483, 487, 83 L ed 927, 934, 937, 58 S Ct 565, 120 ALR 1466.

"Since the Constitution has left Congress free to set aside local taxation and regulation of government contractors which burden the national government, we see no basis for implying from the Constitution alone a restriction upon such regulations which Congress has not seen fit to impose, unless the regulations are shown to be inconsistent with Congressional policy. Even in the case of agencies created or appointed to do the government's work we have been slow to infer an immunity which Congress has not granted and which Congressional policy does not require. Reconstruction Finance Corp. v. J. G. Menihan Corp., 312 US 81, 85 L ed 595, 61 S Ct 485, and cases cited; Colorado Nat. Bank v. Bedford, 310 US 41, 53,

84 L ed 1067, 60 S Ct 800, and cases cited; cf. Baltimore Nat. Bank v. State Tax Commission, 297 US 209, 80 L ed 586, 56 S Ct 417.

"Our inquiry here, therefore, must be whether the state's regulation of this contractor in a matter of local concern conflicts with Congressional legislation or with any discernible Congressional policy. 318 U. S. 268-70, Penn Dairies v. Milk Control Commission".

The complaints are hereby dismissed.

Let this judgment be registered and notified.

San Juan, Puerto Rico, January 4, 1963.

ANGEL M. UMPIERRE
Judge

1 ATTEST:
Clerk.

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

Civil Nos., 58-3224
and 57-1962
Civil Nos., 57-1961; 61-3504;
62-4062; 57-5703; 60-2963;
60-3001; 59-6567; 58-3050
Civil Nos., 61-4975; 57-3052;
59-1878; 59-1877; 60-6418;
61-4201; 61-4976
Property Taxes

THE TEXAS COMPANY (PR) INC., et als,
Plaintiff,

v.

SECRETARY OF THE TREASURY,
Defendant.

Order

The reconsideration sought is hereby denied. We ratify our original judgment in the sense that the immunity granted to the United States Government does not go beyond the Government itself and the governmental functions of its officers and agents. The tax has been imposed on property privately owned, located on land belonging to the United States and leased to plaintiffs.

The case of *P. R. Drydock v. Secretary of the Treasury*, decided on reconsideration on June 22, 1962 (No. 12,006), decides the question now raised in reconsideration of our judgment:

> "Insofar as the levy of taxes is concerned, tax immunity does not exist except in cases of federal property, for we find no justification for extending immunity to a third person who has no immediate

relation with the government in the private exploitation of the dry dock."

Let this order be notified.

San Juan, Puerto Rico, March 19, 1963.

ANGEL M. UMPIERRE
Judge

IN THE SUPREME COURT OF PUERTO RICO

R-63-107
R-63-108
Review

THE TEXAS COMPANY (PR) INC.,
now TEXACO PUERTO RICO INC.,
ESSO STANDARD OIL COMPANY (PR)
and ESSO STANDARD, S. A. LTD.,
Plaintiffs, Appellants,
v.
SECRETARY OF THE TREASURY
OF PUERTO RICO,
Defendant, Appellee.

Division composed by Mr. Chief Justice Negron Fernandez, Mr. Justice Blanco Lugo and Mr. Justice Ramirez Bages

Order

San Juan, Puerto Rico, June 18, 1963.

The petition for review filed in the above-captioned case is hereby denied.

It was so agreed by the Court as witness the signature of the Chief Justice.

(s) LUIS NEGRON-FERNANDEZ
Chief Justice

I attest:
(s) JOAQUIN BERRIOS
Acting Secretary.

IN THE SUPREME COURT OF PUERTO RICO

R-63-107
R-63-108
Review

THE TEXAS COMPANY (PR) INC.,
now TEXACO PUERTO RICO INC.,
ESSO STANDARD OIL COMPANY (PR)
and ESSO STANDARD, S. A. LTD.,
Plaintiffs, Appellants,
v.
SECRETARY OF THE TREASURY
OF PUERTO RICO,
Defendant, Appellee.

Order

Division composed by Mr. Chief Justice Negron Fernandez, Mr. Justice Blanco Lugo and Mr. Justice Ramirez Bages

San Juan, Puerto Rico, Nov. 24, 1963

The motion for reconsideration and to set aside the orders of this Court of June 18, 1963, filed by the plaintiffs-appellants on June 27, 1963, is hereby denied.

It was so agreed by the Court as witness the signature of the Chief Justice.

(s) LUIS NEGRON-FERNANDEZ
Chief Justice

I attest:

(s) IGNACIO RIVERA
Secretary.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR PUERTO RICO

No. 2453 Civil
Condemnation Proceedings

UNITED STATES OF AMERICA,
Petitioner,
v.
180.14 acres of land, more or less,
in the ward of Pueblo Viejo, Municipality
of Guaynabo, Puerto Rico,
Celestino Iriarte, et al.,
Defendants.

Judgment

This cause coming on to be heard at this term of Court upon the motion of the petitioner, the United States of America, to enter a judgment on the Declaration of Taking filed in the above-entitled case on March 3, 1942, for an order fixing the date when possession of the property herein described is to be surrendered to the United States of America, and for an order for recordation of title, and upon consideration thereof and of the condemnation petition filed herein, said Declaration of Taking, the statutes in such cases made and provided, and it appearing to the satisfaction of the Court:

First: That the United States of America is entitled to acquire property by eminent domain for the purposes as set out and prayed in said Petition;

Second: That a Petition for Condemnation was filed at the request of the Acting Secretary of the Navy, the authority empowered by law to acquire the land described in said Petition, and also under authority of the Attorney General of the United States;

Third: That said Petition and Declaration of Taking state the authority under which, and the public use for which said land was taken; that the Secretary of the Navy is the person duly authorized and empowered by law to acquire lands such as are described in the Petition, for the military purposes described in the Declaration of Taking, as authorized by law, and that the Attorney General of the United States is the person duly authorized by law to direct the institution of such condemnation proceedings;

Fourth: That a proper description of the land sought be taken, sufficient for identification thereof, is set out in said Declaration of Taking and in the Petition for Condemnation as follows:

> "A parcel of land shown as Parcel "A" on P. W. Drawing No. 513, situated in the ward of Pueblo Viejo, Municipality of Guaynabo, Puerto Rico, containing an area of 180.14 acres of land, more or less, equivalent to 185.48 cuerdas, equivalent to 72 hectares, 90 ares, 2 centiares, bounded on the Northeast by land of the United States held under the jurisdiction of the Navy Department and by Margarita Creek as defining the Southwesterly boundary of land of Mercedes de la Torre; on the Southeast by Insular Highway No 2; on the South by a small creek forming the Northerly boundary of lands of Jose Maria Gonzalez, by lands of the principal estate from which this parcel is segregated and by land of Natividad Sanchez; on the West by Insular Highway No. 25 and lands of the principal estate from which this parcel is segregated; and on the North and Northwest by lands of the principal estate from which this parcel is segregated and by lands of the United States held under the jurisdiction of the War Department."

The above described parcel is to be segregated from the residuary portion of a larger tract of land which appears

recorded in the Registry of Property of San Juan, section 2 with the following original description:

"RUSTICA: Estancia radicada en el barrio Pueblo Viejo, termino de Guaynabo, compuesta de trescientas dos cuerdas con setentinueve centimos, con casa habitacion de madera, cubierta de zinc, de altos y bajos, dos ranchones y varios bohios, un horno para cal, una maquina para triturar piedra, diez wagonetas y quinientos metros de via portatil, dos polvorines fabricados de concreto armado, un muelle sobre la bahia de San Juan para carga y descarga de materiales en colindancias por el Norte, con Marcos Tomas Caneja y la zona maritima; por el Sur, con la carretera de Catano a Guaynabo; por el Este, con Jose Cestero, separado por la Quebrada Margarita, y por el Oeste, con la carretera de Catano a Guaynabo."

Recorded in fee simple (dominio title) in the name of Celestino Iriarte, married to Ana Maria Valdes Cobian and Eduardo Iriarte married to Maria Pereyo, at folio 114 of volume 2 of Guaynabo, property No. 54, inscription one, and at folio 122 of volume 2 of Guaynabo, property No. 54, inscription eight.

Various segregations have been made from the last above described property and the following is the actual description of the residuary portion:

"RUSTICA: Finca radicada en el barrio Pueblo Viejo del Municipio de Guaynabo, Puerto Rico, compuesta de doscientas treinta y nueve cuerdas con doscientas cuarenta y dos milesimas, mas o menos, equivalentes a noventa y cuatro hectareas, tres areas, diez y seis centiareas y setenta y cinco miliareas, en colindancias: Por el Norte, con terrenos de los Estados Unidos y la zona maritima; por el Sur, la carretera insular numero dos de Santurce a Bayamon y parcelas de Natividad Sanchez Ayala, Cecilio Delgado, Lemuel

Marques Campillo, Mercedes San Martin y Georgina, Hernan y Julio Acuna Acosta y parcela originalmente vendida a Angel Munet y hoy urbanizada y distribuida en diversos solares pertenecientes a distintas personas; por el Este, con la Carretera Insular Numero Dos de Santurce a Bayamon y la Quebrada Margarita que separa terrenos de Mercedes de la Torre y Jose Marin Gonzalez; y por el Oeste, con la carretera insular de Catano a Guaynabo."

Fifth: That said Declaration of Taking contains a statement of the estate or interest in the said land taken for said public use;

Sixth: That a map of the land taken in this proceeding is incorporated to said Declaration of Taking as Exhibit "A";

Seventh: That a statement is contained in said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for said lands, in the amount of $30,100., and that said sum was deposited in the Registry of this Court, for the use of the persons entitled thereto, upon and at the time of the filing of said Declaration of Taking;

Eighth: That a statement is contained in said Declaration of Taking that the amount of the ultimate award of compensation for the taking of said property, in the opinion of the said Acting Secretary of the Navy, will be within any limits prescribed by Congress as to the price to be paid therefor; it is therefore, this 3rd day of March, 1942,

ADJUDGED, ORDERED AND DECREED, that the title to the parcel of land situated in the ward of Pueblo Viejo, Municipality of Guaynabo, Puerto Rico, shown on the map attached to the Declaration of Taking and described in this Judgment, containing an area of 180.14 acres of land, more or less, together with all buildings, improvements

and appurtenances thereunto belonging, vested in the United States of America upon the filing of said Declaration of Taking and the depositing in the Registry of this Court of the sum of $30,100, in fee simple, reserving to the owners of the lands, of their assigns, the right to use and operate any portion of the quarry lying within 600 feet of Insular Road No. 2, and to remove quarried material therefrom, for a period of six months from the date of the filing of the judgment on the Declaration of Taking herein.

The said lands are deemed to have been condemned and taken for the use of the United States of America, and the right to just compensation for the property taken, upon the filing of the Declaration of Taking and making of the deposit, vested in the persons entitled thereto, and the amount of compensation shall be ascertained and awarded in this proceeding as established by judgment herein pursuant to law.

That the United States of America is now entitled to the possession of the premises described in this Judgment fifteen days after service of a copy of this judgment, of the Petition for Condemnation and of the Summons upon the defendants in possession of the premises mentioned in this proceeding, or if no defendants are in actual possession thereof, then fifteen days after the posting of a copy of this Judgment at a conspicuous place upon each of the parcels condemned, the United States and its agents are hereby authorized to take full and complete possession thereof; and this cause is held open for such other and further orders, judgments and decrees as may be necessary in the premises.

It is hereby ordered that the Registrar of Property of San Juan, Second Section, proceed to record in the name of the United States of America the fee simple (dominio) title to the parcel of land described in this judgment, re-

serving to the owners of the land, or their assigns, the right to use and operate any portion of the quarry lying within 600 feet of Insular Road No. 2, and to remove quarried material therefrom, for a period of six months from the date of the filing of this judgment.

It is further ordered that the United States Marshal be and he is hereby directed and instructed forthwith to serve a copy of the Petition for Condemnation, of the Summons, and of this Judgment upon any of the defendants now in possession of said premises, or if no such defendants are found in actual possession of the premises, then he is ordered to post a copy of this Judgment at a conspicuous place upon the parcel herein condemned and forthwith make due return of said service to this Court.

San Juan, Puerto Rico, March 3, 1942.

(s) Robt. A. Cooper
Robert A. Cooper
Judge

Attest: A True Copy
Mary Aguayo
Clerk U. S. Dist. Court
By: (s) Carmen Wilda Arias
Deputy

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF PUERTO RICO

No. 2453 Civil

UNITED STATES OF AMERICA
Petitioner
v.
180.14 acres of land, more or less,
in the ward of Pueblo Viejo, Municipality
of Guaynabo, Puerto Rico,
Celestino Iriarte, et al
Defendants

Declaration of Taking

WHEREAS, it has become necessary that the lands which are the subject of condemnation in the above entitled proceeding be taken for immediate public use by the United States of America for the establishment of fuel storage facilities, for use in connection with the Naval Air Station, San Juan, Puerto Rico, upon the filing of this declaration of taking.

NOW, THEREFORE, I, James Forrestal, Acting Secretary of the Navy, acting for and in the capacity of the Secretary of the Navy, under and pursuant to the provisions of the Acts of Congress approved August 21, 1941 (Public Law 241, 77th Congress; 55 Stat., Chapter 395); August 25, 1941 (Public Law 247, 77th Congress; 55 Stat., Chap. 409); August 1, 1888 (25 Stat., 357; U.S.C., title 40, sec. 257); and February 26, 1931 (46 Stat., 1421; U.S.C., title 40, sec. 258a), do hereby make and cause to be filed this declaration of taking, pursuant to said Acts of Congress and any acts amendatory thereof or supplementary thereto, and by virtue and authority thereof, do hereby state that I have selected for acquisition one hundred eighty and fourteen one-hundredths (180.14) acres of land, more or less, in the

Ward of Pueblo Viejo, Municipality of Guaynabo, Puerto Rico, which said lands are shown on blueprint of P. W. Drawing No. 513, approved December 4, 1941, entitled "10th Naval District, San Juan, P. R. Plat of Site for Fuel Oil Storage Facilities", which is attached hereto as Exhibit "A" and made a part of this declaration of taking. Said lands are more particularly described as follows:

A parcel of land shown as Parcel "A" on P. W. Drawing No. 513 (attached hereto as Exhibit "A") situated in the Ward of Pueblo Viejo, Municipality of Guaynabo, Puerto Rico, containing an area of 180.14 acres of land, more or less, equivalent to 185.48 cuerdas, equivalent to 72 hectares, 90 ares, 2 centiares, bounded on the Northeast by land of the United States held under the jurisdiction of the Navy Department and by Margarita Creek as defining the Southwesterly boundary of land of Mercedes de la Torre; on the Southeast by Insular Highway No. 2; on the South, by a small creek forming the Northerly boundary of lands of Jose Maria Gonzalez, by lands of the principal estate from which this parcel is segregated and by land of Natividad Sanchez; on the West by Insular Highway No. 25 and lands of the principal estate from which this parcel is segregrated; on the North and Northwest, by lands of the principal estate from which this parcel is segregated, by lands of the United States held under the jurisdiction of the War Department and described by metes and bounds as follows:

Beginning at point "b" as shown in Exhibit "A", hereinbefore referred to, said point being the intersection of the Northwesterly line of Insular Highway No. 2 with the center of Margarita Creek; thence along the center of said creek which bounds the land of Mer-

cedes de la Torre on its Southwesterly side the following courses and distances:

North 14° 19′ 08″ West; a distance of 43.75 feet to point "C";

Thence North 31° 26′ 09″ West, a distance of 47.46 feet to point "d";

Thence North 30° 43′ 37″ West a distance of 104.57 feet to point "e";

Thence North 60° 57′ 58″ West, a distance of 123.13 feet to point "f";

Thence North 54° 29′ 26″ West a distance of 18.87 feet to point "g";

Thence South 80° 07′ 30″ West, a distance of 24.20 feet to point "h";

Thence South 87° 24′ 15″ West a distance of 26.72 feet to point "i";

Thence North 38° 22′ 26″ West a distance of 133.35 feet to point "j";

Thence North 42° 02′ 44″ West a distance of 200.04 feet to point "k";

Thence North 40° 31′ 09″ West a distance of 150.16 feet to point "l";

Thence North 43° 34′ 25″ West a distance of 150.01 feet to point "m";

Thence North 43° 37′ 02″ West a distance of 162.23 feet to point "n";

Thence North 45° 59′ 58″ West a distance of 69.31 feet to point "o";

Thence North 52° 32′ 02″ West a distance of 593.83 feet to point "X" which point is the most Westerly corner of land of Mercedes de la Torre and the most Southerly corner of land of the United States held under the jurisdiction of the Navy Department;

Thence along the Southwesterly boundary of said

land of the United States, North 41° 10′ 04″ West, a distance of 1769.03 feet to point "B";

Thence North 22° 52′ 45″ West a distance of 438.14 feet to point 24 prime which point is on the Southeasterly line of land of the United States held under the jurisdiction of the War Department;

Thence along the Southeasterly boundary of said land of the United States, the following courses and distances:

South 28° 36′ 50″ West a distance of 93.80 feet to point No. 24;

Thence South 5° 22′ West a distance of 65.43 feet to point No. 25;

Thence South 17° 31′ West, a distance of 150.28 feet to point No. 26;

Thence South 38° 06′ West, a distance of 172 feet to point No. 27 which point is in the center of Embarcadero Creek;

Continuing thence along the Southeasterly line of said land of the United States as defined by Embarcadero Creek, the following courses and distances:

South 40° 27′ West a distance of 102.25 feet to point No. 28;

Thence South 25° 55′ West a distance of 100.08 feet to point No. 29;

Thence South 21° 21′ West a distance of 100.71 feet to point No. 30;

Thence South 32° 13′ West, a distance of 100.23 feet to point No. 31;

Thence South 24° 11′ West a distance of 100.25 feet to point No. 32;

Thence South 32° 46′ West a distance of 100.32 feet to point No. 33;

Thence South 25° 20′ West a distance of 100.12 feet to point No. 34;

Thence South 29° 21′ West a distance of 100.02 feet to point No. 35;

Thence South 39° 30′ West a distance of 86.69 feet to point No. 36;

Thence South 31° 11′ West a distance of 115.15 feet to point No. 37 which is a concrete monument;

Thence departing from the Southeasterly line of said land of the United States, South 38° 57′ East a distance of 502.90 feet to point No. 1A;

Thence South 38° 56′ 10″ East a distance of 499.00 feet to point No. 2;

Thence South 51° 03′ 30″ West a distance of 310.10 feet to point No. 3;

Thence South 76° 09′ 20″ West a distance of 764.50 feet to point No. 4 which is on the Easterly line of Insular Highway No. 25;

Thence along the Easterly line of said highway the following courses and distances:

South 0° 12′ 40″ West a distance of 62.81 feet to point No. 5;

Thence South 1° 46′ 20″ West a distance of 496.04 feet to point No. 6;

Thence South 3° 59′ 10″ East a distance of 110.75 feet to point No. 7;

Thence South 10° 09′ 50″ East a distance of 117.65 feet to point No. 8;

Thence South 13° 17′ 20″ East a distance of 246.94 feet to point No. 9;

Thence South 11° 42′ 10″ East a distance of 475.29 feet to point No. 10;

Thence South 5° 35′ 30″ East a distance of 172.56 feet to point No. 11;

Thence South 10° 07′ 50″ East a distance of 74.77 feet to point No. 12;

Thence departing from the Easterly line of said

highway, South 46° 54' 50" East, a distance of 69.42 feet to point No. 13;

Thence South 77° 04' 40" East a distance of 212.22 feet to point No. 14;

Thence North 38° 08' 20" East a distance of 679.53 feet to point No. 15;

Thence North 84° 59' 10" East a distance of 822.46 feet to point No. 16;

Thence South 75° 02' 20" East a distance of 229.56 feet to point No. 17 which is the most Northerly corner of land of Natividad Sanchez;

Thence along the Northeasterly line of said land of Natividad Sanchez, South 49° 51' 40" East a distance of 286.95 feet to point No. 18;

Thence departing from said Northeasterly line, North 45° 32' 10" East a distance of 38.37 feet to point No. 19;

Thence North 66° 28' 30" East a distance of 36.08 feet to point No. 20;

Thence North 68° 15' 20" East a distance of 56.04 feet to point No. 21;

Thence North 72° 37' 30" East a distance of 70.06 feet to point No. 21-A;

Thence North 72° 40' 20" East a distance of 122.69 feet to point No. 21-B;

Thence North 71° 47' East a distance of 44.60 feet to point No. 21-C;

Thence North 65° 36' 30" East a distance of 119.77 feet to point No. 21-D;

Thence North 60° 44' 10" East a distance of 152.62 feet to point No. 21-E;

Thence North 73° 41' 40" East a distance of 46.38 feet to point No. 21-F;

Thence South 88° 07' 30" East a distance of 161.42 feet to point No. 21-G;

Thence North 74° 26′ 50″ East a distance of 34.53 feet to point No. 21-H;

Thence North 88° 43′ 50″ East a distance of 59.07 feet to point No. 21-I;

Thence South 72° 02′ 20″ East a distance of 20.30 feet to point No. 21-J;

Thence South 64° 04′ 30″ East a distance of 42.80 feet to point No. 21-K;

Thence North 5° 40′ 50″ East a distance of 7.68 feet to No. 21-L;

Thence North 26° 13′ East a distance of 17.68 feet to point No. 21-M;

Thence North 58° 33′ 40″ East, a distance of 18 feet to point No. 21-N;

Thence North 71° 01′ 10″ East a distance of 25.24 feet to point No. 21-O;

Thence North 77° 57′ 10″ East a distance of 32.00 feet to point No. 21-P;

Thence South 65° 18′ East a distance of 38.19 feet to point No. 21-Q;

Thence North 69° 56′ 50″ East a distance of 25.31 feet to point No. 21-R;

Thence North 44° 06′ East a distance of 12.60 feet to point No. 21-S;

Thence North 8° 34′ 10″ East a distance of 36 feet to point No. 21-T;

Thence North 76° 20′ 50″ East a distance of 31.10 feet to point No. 22 which is on the Northwesterly line of Insular Highway No. 2;

Thence along the Northwesterly line of said highway the following courses and distances:

North 42° 09′ 10″ East a distance of 228.65 feet to point No. 23; thence North 30° 00′ 21″ East a distance of 324.20 feet to point "a"; thence

North 36° 29' 31" East a distance of 197.05 feet to point "b" which is the point of beginning.

And I do declare said lands to be taken under authority of the aforesaid acts of Congress; that the use to which said lands are to be put is the same as authorized by said acts; and that the estate hereby taken in said lands for the public use aforesaid is in fee simple, reserving to the owners of the lands herein described, or their assigns, the right to use and operate any portion of the quarry lying within 600 feet of Insular Road No. 2, and to remove quarried material therefrom, for a period of six months from the date of filing of the judgment of this declaration of taking.

And I, James Forrestal, Acting Secretary of the Navy, acting for and in behalf of the Secretary of the Navy, do hereby state that the sum of money estimated by me to be just compensation for all of said lands, improvements thereon and appurtenances thereunto belonging, is Thirty Thousand One Hundred and 00/100 Dollars ($30,100.00), which said sum having been appropriated by Congress is hereby deposited into the registry of the court for the use and benefit of the persons entitled thereto, and that the names and addresses of the owners of said property or interest therein and the amount of just compensation for said lands and improvements thereon, which are hereby taken are shown on Schedule "A" which is attached hereto and made a part of this declaration of taking.

I am of the opinion that the ultimate award for the taking of said lands will be within the limits prescribed by Congress.

In Witness Whereof the petitioner, by and through the said James Forrestal, Acting Secretary of the Navy, acting for and in behalf of the Secretary of the Navy, has caused this declaration of taking to be signed in its name and has caused the seal of the Navy Department to be affixed hereto

on the 25th day of February, 1942, in the city of Washington, District of Columbia.

UNITED STATES OF AMERICA
By: (sgd) JAMES FORRESTAL
JAMES FORRESTAL
Acting Secretary of the Navy
(SEAL)

SCHEDULE "A"

The names and addresses of the persons having title to or other interest in the lands described in the within declaration of taking, and the amount estimated to be fair compensation for each respective ownership, including all improvements thereon, are as follows:

Name and Address	*Acres*	*Estimated fair compensation*
Celestino Iriarte, Ana Maria Valdes Cobrian, his wife, Gonzalez Padin Building San Juan, Puerto Rico Eduardo Iriarte Maria Pareyo, his wife Concordia St. No. 7 Santurce, Puerto Rico. Attachment Lien:	180.14	$ 30,000.00

Attachment entered upon the undivided share of the principal estate owned by Celestino Iriarte pursuant to an order of the District of Mayaguez dated September 6, 1932 in an action brought by Hector Connely, a resident of San German, Puerto Rico, to recover the sum of $1,000.00 plus interest at the rate of 12% per annum from May 19, 1930, at folio 59 of volume 7 of Guaynabo, property #54, annotation "A" of October 4, 1932.

Mortgages:

In favor of the People of Puerto Rico to secure a bond for the sum of $10,000.00 for the provisional liberty of Rafael Monte, as evidence by affidavit #2849 of August 2, 1937, before notary public Francisco Fernandez, duly recorded at folio 112 of volume 16 of Guaynabo, property #54, inscription 16 of August 3, 1937.

In favor of the People of Puerto Rico to secure a bond for the sum of $10,000.00 for the provisional liberty of Antonio Suarez, as evidenced by affidavits #5148 and #5149, of August 7, 1937, before notary public Juan Lastra, duly recorded at folio 112 of Volume 16 of Guaynabo, property #54, inscription 17 of August 9, 1937.

In favor of the People of Puerto Rico to secure a bond for the sum of $6,000.00 for the provisional liberty of Luis Pumare, as evidenced by affidavit of February 8, 1938, before the Clerk of the District Court of Bayamon, duly recorded at folio 113 of volume 16 of Guaynabo, property #54, inscription 18 of February 10, 1938.

Pan American Rifle and Pistol Club Inc.; Ramiro E. Ortiz, Secretary, Custom House, San Juan, Puerto Rico	(Improvements)	$ 100.00
TOTAL		$30,100.00

DOCUMENTARY EVIDENCE OF ALL THE PARTIES CATANO FUEL STORAGE FACILITY SAN JUAN, P. R.

CONTRACT FOR USE AND OCCUPANCY

This Contract, made and entered into this 2nd day of July, 1947, by and between the UNITED STATES OF AMERICA, represented by the Secretary of the Navy, hereinafter called the GOVERNMENT and the STANDARD OIL COMPANY OF PUERTO RICO, THE TEXAS COMPANY (PUERTO RICO) INC., and PYRAMID PRODUCTS INC., all incorporated under the laws of Puerto Rico, and THE SHELL COMPANY (PUERTO RICO) LTD., whose registered office is St. Helen's Court, Great St. Helen's, London, England, duly licensed to operate in accordance with the laws of Puerto Rico.

WITNESSETH

WHEREAS, The Army-Navy Petroleum Board at Washington, D. C., has advised of procedure for the leasing, licensing, and use of United States property and facilities to and by commercial petroleum products suppliers and has recommended the entering into of contracts for the leasing, licensing, and use of United States property and facilities with active petroleum companies in the San Juan, Puerto Rico area;

WHEREAS, the Government is the owner of certain land, appurtenances and improvements in the San Juan, Puerto Rico area, in the Municipalities of Catano and Guaynabo, known as the Catano Fuel Storage Facility hereinafter referred to as FACILITIES;

WHEREAS, the COMPANIES comprise all the petroleum companies operating in the bulk petroleum fuel business in Puerto Rico and it has been determined that the COMPANIES desire to use and operate the FACILITIES jointly and severally, as may be mutually agreed upon among them;

WHEREAS, The FACILITIES have never been activated and as now exis ing are considered by the parties hereto as inoperable nd inadequate and will require, in the opinion of the COMPANIES, the outlay of approximately One Hundred Thousand Dollars ($100,000.00) for rehabilitation and overhaul in order to place the FACILITIES in operable condition;

WHEREAS, the continued ordinary maintenance, repairs and replacements alone are estimated by the COMPANIES to be between Forty Thousand Dollars ($40,000.00) and Fifty Thousand Dollars ($50,000.00) per annum;

WHEREAS, the COMPANIES contemplate the construction of substantial additional facilities costing possibly over One Million Dollars ($1,000,000.00);

WHEREAS, the rehabilitation and continued maintenance of said FACILITIES and the construction of substantial additional facilities will be of direct benefit to the United States of America at this time, since such action satisfies a basic requirement of national defense, now, in the time of future national emergency or war, by, insofar as present conditions are concerned, placing the COMPANIES in a better position to supply from other facilities now being operated by the COMPANIES and from these facilities, all the COMPANIES requirements both for local consumption and for export, the requirements of the Puerto Rico Water Resources Authority and the requirements of the Armed Forces of the United States, and, insofar as future conditions are concerned, placing the United States Government in a position of being able to recapture an actively maintained and modernized installation whose immediate use is vital at such time;

NOW THEREFORE, in consideration of the premises hereinbefore set forth and the further covenants and agreements hereinafter appearing, and by the mutual consent of the

parties hereto, the GOVERNMENT and the COMPANIES, it is agreed as follows:

THE FACILITIES

1-a. THE GOVERNMENT will make available for the use of the COMPANIES the following described premises:

> All that tract of land lying part in the Municipality of Catano and part in the Municipality of Guaynabo, Puerto Rico to the south of Pueblo Viejo Bay in the harbor of San Juan, comprising approximately 190 acres, bounded on the Northeast by properties of Jose Ferre and of Mercedes de la Torre and by other parts of the United States Naval Reservation; on the Southeast and South by Insular Road No. 2 and by properties of Natividad Sanchez and Iriarte Brothers; on the West by Insular Road No. 25 and by properties of Iriarte Brothers and the United States War Department; all as shown more particularly on Navy Public Works Drawings No. 1640 dated 18 February 1947 and No. 1640 dated 18 February 1947 copies of which drawings are attached hereto and made a part hereof, marked Exhibit "A", together with all improvements located thereon and with a wooden pier in the harbor of San Juan on the Catano or south shore thereof, the major items of which are as described on the inventory attached hereto and made a part hereof, marked Exhibit "B",

excepting therefrom, however, certain improvements and areas under certain conditions, more particularly set forth in Clause 1-b thereof.

1-b. The GOVERNMENT retains for its own use that portion of the premises described in Clause 1-a hereof, comprising Buildings Nos. 39 and 40, together with all immediately adjacent land necessary for the full enjoyment thereof and necessary rights of access to said buildings.

Should it be determined that said buildings, land and access are no longer necessary for Naval purposes this Clause, upon notification in writing to the COMPANIES, shall be of no force and effect, and Clause 1-a insofar as it makes a reservation, shall be of no force and effect.

TERM OF USE

2-a. The COMPANIES shall have the right to use, occupy and improve that portion of the FACILITIES and the adjacent land necessary for the full enjoyment of such portion, as is set forth in Exhibit "C" attached hereto and made a part hereof and referred to hereinafter as Class "A" facilities, for a period of twenty years, except as hereinafter provided, with the further right to renew this agreement for a additional ten years; the COMPANIES shall have the right to use, occupy and improve the portion of the FACILITIES and all other land as is set forth in Exhibit "C", and referred to hereinafter as Class "B" facilities, for a period of five years, except as hereinafter provided. The incorporation in Exhibit "C" of all facilities shall not be considered a derogation of the GOVERNMENT's rights under Clause 1-b hereof.

2-b-i. In the event general authorization is granted by the Congress to contract for the use, occupation and improvement of Class "B" facilities in the same manner as is herein provided for Class "A" facilities, this agreement will be immediately supplemented so as to provide that all Class "B" facilities shall be subject to the same terms and conditions as are applicable to Class "A" facilities.

2-b-ii. If the aforementioned authorization is not granted by the Congress, the GOVERNMENT will make favorable representation to the Congress concerning any specific legislation introduced to accomplish the purposes set forth in Clause 2-b-i herein.

2-b-iii. In any event, the GOVERNMENT represents that it is not its present intention to exercise its powers of revocation concerning Class "B" facilities, except insofar as such power will be exercised as a complimentary action to the cancellation provided in Clause 3-a hereof.

CANCELLATION OR WITHDRAWAL

3-a. The GOVERNMENT may revoke, cancel and terminate this agreement at any time in the event the Secretary of the Navy determines that such action is necessary in the interest of national defense; the GOVERNMENT may revoke, cancel and terminate this agreement insofar as it relates to the lands and facilities designated as Class "B" at any time.

3-b. The COMPANIES may revoke, cancel and terminate this agreement at any time upon six months' written notice to the GOVERNMENT, provided, that such notice of cancellation is given by a majority of the corporation of parties forming the COMPANIES.

3-c. Any one of the parties comprising the COMPANIES may withdraw from participation in this agreement, provided such party gives six months' notice in writing to the GOVERNMENT AND TO EACH OF THE REMAINING PARTIES, WHO SHALL thereafter be designated as the COMPANIES.

PAYMENT FOR USE

4-a. The COMPANIES shall pay to the GOVERNMENT for the use and occupancy of the FACILITIES, the sum of Fifteen Thousand Dollars ($15,000.00) per annum, payable semi-annually in equal installments in advance. The sum shall be payable by check made payable to the Treasurer of the United States and forwarded to the Bureau of Supplies and Accounts, Navy Central Disbursing Office, Washington, D. C., with a copy of the forwarding letter to Bureau of Yards and Docks.

4-b. Should the use and occupation of any portion of

the FACILITIES be denied by action of or caused by fault of the GOVERNMENT, the rent reserved in Clause 4-a hereof shall be negotiated upon the basis of the FACILITIES remaining available for use by the COMPANIES.

4-c. The obligation of the COMPANIES to pay for the use and occupancy of the FACILITIES is joint and several and the GOVERNMENT may receive or collect the rents reserved from any or all of the parties comprising the COMPANIES.

OBLIGATION OF MAINTENANCE

5-a The COMPANIES shall be responsible for normal protective maintenance of the facilities, including, but not limited to, roads, structures, piping and tanks, excluding, however, the road connecting the Navy Pier and Insular Road No. 2, and buildings 39 and 40 so long as held under Clause 1-b hereof, and excluding further such items which, by mutual agreement between the parties, remain in or are transferred to the custody of the GOVERNMENT and are sealed off or removed from the site. By normal protective maintenance is meant the taking of measures similar to those taken by commercial oil companies concerning their owned capital assets to prevent fires, abnormal wear and tear or premature exhaustion due to carelessness or neglect.

5-b. The COMPANIES shall maintain in complete repair and serviceable condition the road now connecting the Navy Pier and Insular Road No. 2.

RIGHT TO IMPROVE

6-a. The COMPANIES shall have the right to repair, renew or replace (as distinct from its obligation to perform normal protective maintenance), any part of the facilities at their own cost and expense, provided, however, that in the case of major articles requiring renewal or replacement the COMPANIES shall first notify the GOVERNMENT in writing that specific items are considered

to be unserviceable and shall allow the GOVERNMENT a reasonable period of time in which to inspect such items. If, after such notification, no inspection is made within a reasonable period of time, or after such inspection no negative response is made by the GOVERNMENT, the COMPANIES may proceed with the renewal or replacement. All such renewals or replacements in whole or in part of any of the physical capital assets of the FACILITIES as are made voluntarily by the COMPANIES shall remain the property of the COMPANIES and shall be considered as additional improvements and structures, and subject to the provisions of Clause 7-d.

6-b. The COMPANIES shall have the right to make alterations and changes in the capital facilities, provided, that in the case of all substantial alterations or changes the COMPANIES will furnish the GOVERNMENT with plans of the proposed substantial alterations or changes prior to the commencement of any such work and no work shall be commenced without the written approval of the GOVERNMENT.

6-c. The COMPANIES may erect within the FACILITIES permanent improvements such as additional storage tanks, pipe lines, warehouses, land offices, pump houses, sanitary facilities, railroad sidings, and other improvements convenient to the marketing of petroleum and associated products, or to facilitate the operation of the storage facilities and the ready receipt, discharge and delivery of petroleum and associated products in both bulk and packages, provided, however, that prior to such improvements the COMPANIES will furnish the GOVERNMENT with plans of the proposed improvements prior to commencement of any such work and no work shall be commenced without the written approval of the GOVERNMENT. All such additional improvements shall be kept free and clear of all liens and encumbrances of any kind whatsoever, and shall

remain the property of the COMPANIES and may be removed by the COMPANIES at any time prior to expiration or cancellation of this contract, provided, however, that prior to such removal the COMPANIES will furnish the GOVERNMENT written notice of intention to remove and no removal will be accomplished without written statement of the GOVERNMENT that the GOVERNMENT does not elect to acquire title under Clause 7-d hereof.

WITHDRAWAL OR TERMINATION

7-a. Any party withdrawing from this agreement in accordance with Clause 3-c hereof shall not be relieved from the discharge of any obligation which has accrued prior to the effective date of withdrawal. All obligations, responsibilities, and benefits of the withdrawing party, from and after the effective date of withdrawal, shall be prorated among the remaining parties comprising the COMPANIES.

7-b. Upon the expiration of this contract or of any renewal or extension thereof, or upon the exercise by the GOVERNMENT of the rights reserved in Clause 3-a hereof, the COMPANIES shall, upon demand by the GOVERNMENT, remove all structures and improvements and restore the premises to the same condition as that at the time existing when first it discharged its obligation under Clause 5-a hereof, normal wear and tear excepted.

7-c. In the event the restoration referred to in Clause 7-b hereof is not effected within six months after demand by the GOVERNMENT, title to all structures and improvements shall vest in the GOVERNMENT without further rights in or compensation to the COMPANIES, and such restoration as may be necessary to accomplish the obligation of the COMPANIES set forth in Clause 7-b hereof may be effected by the GOVERNMENT and the cost thereof charged to the COMPANIES.

7-d. The GOVERNMENT shall have the right at the expiration or termination of this contract, or within a reasonable time thereafter, to take title to all structures and improvements placed upon the FACILITIES by the COMPANIES, and will pay the value thereof to the COMPANIES. The value of such structures and improvements is to be determined on the basis of off-site salvage value, less cost of restoration of the premises following removal. In the event no agreement can be reached as to the value of the structures and improvements such value will be determined by a court of competent jurisdiction in accordance with the laws governing the acquisition of such property upon the basis aforementioned.

7-e. In the event the rights of the GOVERNMENT under Clause 3-a hereof are exercised within fifteen years from the date of this instrument, the GOVERNMENT AGREES TO MAKE to the Congress of the United States favorable recommendations concerning a new legislation introduced for the purpose of reimbursing the COMPANIES in a reasonable and proportionate amount of the expenses actually incurred by the COMPANIES in placing the FACILITIES in an operating condition, or incurred by the COMPANIES under Clause 6-b and 6-c hereof, provided the GOVERNMENT takes title thereto pursuant to Clause 7-d hereof, taking into consideration amortization of such expenses over a twenty year period. Such representations shall not extend to any legislation introduced to reimburse the COMPANIES for any other expenses or losses incurred by reason of this contract.

FURTHER RIGHTS AND OBLIGATIONS

8-a. The COMPANIES, except insofar as prevented by conditions beyond their control, will maintain on hand* at all times as soon as the FACILITIES are in operating con-

*"On hand" is defined as 'in the San Juan Area, but not necessarily in the Facilities')

dition, the following stocks of petroleum products for the use of the Armed Forces of the United States and the Puerto Rico Water Resources Authority:

i. For the Armed Forces of the United States:
   1. 6,000 barrels of motor gasoline
   2. 5,000 barrels Navy special fuel oil
   3. 15,000 barrels Navy diesel fuel

ii. For the Puerto Rico Water Resources Authority:
   1. 50,000 barrels fuel oil.

8-b. The COMPANIES shall put the FACILITIES in condition to receive the products listed in Clause 8-a hereof as soon as practicable after the execution of the lease, and until the FACILITIES are in operating condition will meet the normal requirements of the Armed Forces and the Puerto Rico Water Resources Authority for such products in the San Juan area.

8-c. Clauses 8-a and 8-b hereof shall be effective only to the extent that the COMPANIES, or any of them, are contract suppliers of said products to the Armed Forces and/or Puerto Rico Water Resources Authority respectively.

9-a. The GOVERNMENT SHALL NOT BE LIABLE FOR DAMAGES for injury to person or property of the COMPANIES, the COMPANIES' agents, or employees, or any person in the FACILITIES at the invitation of the COMPANIES, or of the COMPANIES' agents, or employees, whether such injury arises out of the condition of the FACILITIES, the use of the FACILITIES by the COMPANIES, or the lawful action of the GOVERNMENT, or its agents, on the premises or in the vicinity thereof, and the COMPANIES will indemnify and hold harmless the GOVERNMENT against any claims or demands arising out of such injury: provided, however, that nothing herein shall be construed as obligating the COMPANIES to be liable for damages for injury to person or property resulting from the sole negligence of the GOVERNMENT, its agents or employees.

9-b-i. In the event that loss or damage to the FACILITIES as they now exist, or as they are maintained in current operating condition, is caused or occasioned by the negligence of the COMPANIES, then such loss or damage shall be made good by the COMPANIES. This responsibility extends to damage caused or occasioned by the negligence of the COMPANIES' agents, employees, or invitees, and the responsibility comprising the COMPANIES is joint and several.

9-b-ii. In the event that loss or damage to the FACILITIES as they now exist or are maintained and improved is caused by the GOVERNMENT, then such loss or damage may be made good by the GOVERNMENT if it so elects. In the event it does not so elect, the loss or damage may be made good by the COMPANIES, and the COMPANIES shall have a right of recovery against the GOVERNMENT to the extent permissible and authorized by law.

10. In order that the Government may at all times be cognizant of the potential value of the FACILITIES for purposes of national defense and inspection of the FACILITIES and an outlined inventory of the major items, with the description of their operating condition, will be made annually and jointly by representatives of the GOVERNMENT and of the COMPANIES, at which time important alterations, deletions and additions that have been made since the previous report shall be recorded.

11-a. The COMPANIES shall grant free use of the Navy pier, which forms part of the FACILITIES, to vessels of the Armed Forces of the United States which may desire to take petroleum fuel from the premises and to the tankers of the Armed Forces of the United States, discharging or loading aviation gasoline through the pipelines belonging to the GOVERNMENT and connected with the aviation gasoline storage facilities at San Patricio, Puerto Rico. The COMPANIES are not responsible for the protective main-

tenance of the pipeline facilities located on said pier or passing through the FACILITIES, other than those operating in connection with the tanks and other installations comprising FACILITIES. The United States Armed Forces will have free access for the repair and maintenance of the pipelines connecting the pier with the San Patricio gasoline station.

11-b. Any damage to the pier caused by the negligence of the COMPANIES shall be made good in accordance with Clause 9-b-i hereof.

11-c. Any damage to the pier caused by vessels in the services of the Armed Forces of the United States docking at said pier, are for the account of the respective vessels or the owners th reof, and such damage may be made good by the GOVERNMENT, if it so elects, or by the COMPANIES in accordance with Clause 9-b-ii hereof.

12. The officers and agents of the GOVERNMENT in carrying out their duties shall have the right to enter upon the premises with their vehicles at any and all times. All vehicles or equipment carrying U. S. Army personnel, employees, families, invitees and their property shall have free travel at all times over the road through the FACILITIES between the Army Terminal and Insular Government Highway No. 2. Nothing herein shall be construed to limit the right of the COMPANIES to regulate but not restrict all traffic entitled to use the road through the FACILITIES.

13. The COMPANIES shall comply with all rules and regulations hereafter prescribed by the GOVERNMENT for the furtherance of national defense.

14. In the event of default by the COMPANIES in the performance of any obligations under this contract, the GOVERNMENT shall notify the COMPANIES in writing of such default and if the COMPANIES fail to cure such default within a reasonable period thereafter, the GOVERNMENT

may thereupon perform the same on behalf of the COMPANIES and charge the cost thereof to the COMPANIES.

GENERAL PROVISIONS

15. The parties comprising the COMPANIES shall arrange among themselves, in a manner suitable to their corporate interests, the system of operation, accounting, payment and maintenance of the FACILITIES.

16. No obligation exists on the part of the GOVERNMENT to furnish the COMPANIES with water, electricity, or any service whatsoever. However, if the GOVERNMENT consents to supply the COMPANIES with such or similar services, the COMPANIES will pay for the cost thereof by an advance of estimated cost to the Naval Working Fund.

17. No obligation exists in either the GOVERNMENT or the COMPANIES to maintain any specific depths of water at and around the Navy pier; either the GOVERNMENT or the COMPANIES may voluntarily dredge at and around said pier for the purpose of obtaining access thereto.

18. The GOVERNMENT will, to the extent it can so direct, prevent the obstruction by the anchorage of water craft to the channel and turning basin leading to the Navy pier.

19. The GOVERNMENT reserves the right to grant to the Water Resources Authority permission to construct, operate, and maintain a discharge pipeline on the south shore of Pueblo Viejo Bay running from the proposed power plant westward to a point mid-way between the Army Terminal and Navy pier with a discharge outlet at that point; in the event it is determined that the affluent is not dispersed and commingles with intake waters, the Water Resources Authority may be authorized to construct on the Navy pier diversion barriers, such construction to be performed at times and in a manner satisfactory to the GOVERNMENT and the COMPANIES.

20. The rights herein granted to the COMPANIES shall not be assigned or transferred in whole or in part, except that any of the parties comprising the COMPANIES may assign its rights in this contract to any successor company or entity purchasing or taking assignment of all or part of the business in Puerto Rico of such party.

21. The District Public Works Officer of the Tenth Naval District, San Juan, Puerto Rico, is hereby designated and empowered to act as local representative of the GOVERNMENT.

22. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise therefrom. Nothing, however, in this paragraph contained shall be construed to extend to any incorporated company, if the contract be for the general benefit of such corporation or company.

IN WITNESS WHEREOF the parties hereto have caused this contract to be signed the day and year first above written.

UNITED STATES OF AMERICA
By: (sgd) W. JOHN VANEY

In presence of:
Original

(s) JACK E. COCHRANE	(sgd) G. S. WARNER
(sgd) JUAN MEJIAS JR.	Manager The Standard Oil Co. of P. R.
(sgd) KIRSTEN A. ESMANN	(sgd) ENRIQUE BIRD
	Manager The Shell Co. (Puerto Rico) Ltd.
(sgd) H. M. LLOYD	(sgd) L. B. ARTHUR
	Manager, The Texas Co. (Puerto Rico) Inc.
(sgd) H. M. LLOYD	(sgd) ROBERTO BIRD
	Manager, Pyramid Products, Inc.

"CATANO FUEL STORAGE FACILITY
SAN JUAN, P. R.
CONTRACT FOR USE AND OCCUPANCY

Supplementary Agreement

This supplementary agreement, made and entered into this 29th day of March 1948, by and between the United States of America, represented by the Secretary of the Navy, hereinafter called the Government and the Standard Oil Company of Puerto Rico, The Texas Company (Puerto Rico) Inc. and Pyramid Products Inc., all incorporated under the laws of Puerto Rico, and The Shell Company (Puerto Rico) Ltd., whose registered office is St. Helen's Court, Great St. Helen's, London, England, duly licensed to operate in accordance with the laws of Puerto Rico.

Witnesseth

Whereas, the contract NOy(R)-42164 dated July 2, 1947 between the parties hereto provides in Clause 2-b-i thereof that should legislation be enacted by the Congress authorizing the leasing of standby facilities on a long-term basis, such contract would be modified so as to include on a long-term basis that portion of the facilities not so covered and leased; and

Whereas, The Act of Congress of August 5, 1947, (Public Law 364, 80th Congress) authorizes the Secretary of the Navy to lease real property which is not for the time required for public use on long-term basis, upon a determination that such period will promote the national defense or will be in the public interest; and

Whereas, the Secretary of the Navy has determined that it will promote the national defense and will be in the public interest to lease all of the facilities subject to the contract on a long-term basis as hereinafter provided;

NOW THEREFORE, in consideration of the premises hereinbefore set forth and the further covenants and agreements hereinafter appearing, and by the mutual consent of the parties hereto, the GOVERNMENT and the COMPANIES, it is agreed as follows:

1. That Clause 1-a of the contract is amended by deleting therefrom the following language: "excepting therefrom, however, certain improvements and areas under certain conditions, more particularly set forth in Clause 1-b hereof;" That Clause 1-b is deleted in its entirety.

2. That Clause 5-a of the contract is amended by deleting therefrom the following language: "and Buildings 39 and 40 as long as held under Clause 1-b hereof,"

3. That Clause 2-a, 2-b-i, 2-b-ii and 2-b-iii of the contract are deleted and have no force and effect, and that there is substituted in lieu thereof the following clause:

> '2. The COMPANIES shall have the right to use, occupy and improve all of the facilities for a period of twenty (20) years, with the further right to renew this agreement for an additional ten (10) years."

4. That Clause 3-a thereof is deleted and has no force and effect and that there is substituted in lieu thereof the following clause:

> '3-a. The GOVERNMENT may revoke, cancel and terminate this agreement under the following conditions:
>
> i. In the event of the failure of the COMPANIES to comply with all of the covenants and agreements herein set forth and upon failure by the COMPANIES to cure such default within reasonable time as provided in Clause 14 hereof;
>
> ii. In the event of or during any national emergency declared by the President or Congress, in which event, no notice will be given the COMPANIES;

iii. In the event the Secretary of the Navy, or higher authority, determines that the interest of national defense so requires, in which event, 120 days' notice shall be given the COMPANIES;

5. That there is added to the body of the contract an additional clause known as Clause 23 as follows:

'23. In the event any taxes, assessments or similar charges are, with the consent of Congress, imposed by local authorities upon the facilities (as opposed to the leasehold interest of the COMPANIES herein) the COMPANIES shall pay the same when due and payable and the payments to be made by the COMPANIES under '4-a' hereof shall be renegotiated in order to effect an equitable reduction in such payments, which reductions shall not, in any event, be greater than the amount of such taxes, assessments, or similar charges. If the parties hereto are unable to agree on the amounts of renegotiated payments, within ninety (90) days' from the date of the imposition of such taxes, assessments, or similar charges, then the GOVERNMENT shall determine the amounts of such renegotiated payments, which would constitute a reasonable return to the GOVERNMENT and such determination shall be binding on the COMPANIES'

IN WITNESS WHEREOF the parties hereto have caused this contract to be signed the day and year first above written.

In presence of

(s) F. C. RAWSON
(s) G. F. FAVER
(s) C. R. GREEN
(s) N. I. FARINA

UNITED STATES OF AMERICA
By (sgd) JACK E. COCHRANE
By direction of Chief of the Bureau of Yards and Do. acting

under the direction of the Secretary of the Navy

(sgd) G. S. WARNER
Mgr.
The Standard Oil Co. of P.R.

(sgd) E. BIRD
Mgr.
The Shell Co. (Porto Rico) Ltd.

(sgd.) L. B. ARTHUR
Mgr.
The Texas Co. (Puerto Rico) Inc.

(sgd.) ROBERTO BIRD
Mgr. Pyramid Products, Inc."

2. That, once this stipulation is attached to the Judgment Roll and to the transcript of the Evidence made in this case, the record on appeal to the Supreme Court will be ready.

WHEREFORE, the parties respectfully pray that this Hon. Superior Court approve this stipulation.

San Juan, Puerto Rico, May 27, 1957.

JAMES R. BEVERLEY
F. CASTRO FERNANDEZ
FRANCISCO CASTRO AMY
150 Tetuan St. — San Juan, P.R.
By: (s) F. CASTRO AMY
Counsel for the Plaintiff

SECRETARY OF JUSTICE OF P/R/
By: (s) CARLOS N. SOUFFRONT
Counsel for the Defendant

I, ADOLFO PORRATA DORIA, Assistant Secretary of State of the Commonwealth of Puerto Rico, DO HEREBY CERTIFY: That the attached two typewritten pages are a true and correct copy of the original handwritten Act authorizing the Governor of Puerto Rico to convey certain lands to the United States for Naval, Military and other public purposes, approved on February 16, 1963.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this 23rd DAY of January, one thousand nine hundred and sixty three.

(GREAT SEAL OF THE COMMONWEALTH OF P. R. AFFIX'D)

(Signed) ADOLFO PORRATA DORIA
ADOLFO PORRATA DORIA
Assistant Secretary of State

A $1.00 Int. Rev. Stamp attached

H.B. 59

An Act Authorizing the Governor of Puerto Rico to convey Certain Lands to the United States for Naval, Military and Other Public Purposes. Section 1. That the Governor of Porto Rico be and he is hereby authorized in his discretion and in the name of the People of Porto Rico to convey to the United States for naval, military or other public purposes all the right, title and interest of the People of Porto Rico or of any municipality thereof in and to all public lands in the island of Culebra, together with the shores thereof and any public buildings thereon, or in and to so much thereof as may now or hereafter be desired by the United States for such purposes, and in and to any and all roads, streets, or highways or other public property in said island of Culebra belonging to the

people of Porto Rico or to any municipality thereof; together with all rights, easements, benefits and privileges thereunto appertaining. Section 2. That the Governor of Porto Rico be and he is hereby authorized in his discretion and in the name of the People of Porto Rico to convey to the United States for naval, military, or other public purposes all the right, title and interest of the People of Porto Rico or of the municipality of San Juan in and to any or all public lands in the Puntilla in the harbor of San Juan, together with the shores thereof and any public buildings thereon, or in and to so much thereof as may now or hereafter be desired by the United States for such purposes, and in and to any streets or highways or other public property therein belonging to the People of Porto Rico or to the said municipality together with all rights, easements, benefits and privileges thereunto appertaining. Section 3. That the United States or any officer or agent thereof or any contractor in charge on behalf of the United States of the dredging of the harbor of San Juan is hereby authorized at any time hereafter and until other provisions shall have been made by the Legislative Assembly to use any island in the harbor of San Juan belonging to the People of Porto Rico as a place of deposit for the dredgings and soil removed from said harbor or any portion of the shores of said harbor or any portion of the lands adjacent thereto belonging to the People of Puerto Rico which in the judgment of the Governor, may properly be used as such place of deposit. And in carrying out any such plans of improvement of said harbor the United States or any such officer, agent or contractor is hereby authorized to alter the boundary lines of any portion of the shores of said harbor or of any such island or to diminish or increase the area of any such island as may be required by such plans: Provided, that all lands reclaimed by making any

such deposit of dredgings and soil from the harbor shall belong to the People of Porto Rico. Section 4. That the Governor of Porto Rico be and he is hereby authorized in the name of the People of Porto Rico to release any interest or claim that the People of Porto Rico may now have or may hereafter acquire in and upon any land or buildings belonging to the United States in the Island of Porto Rico which may be reserved by the President of the United States for public uses under and by virtue of the power vested in him under the terms of an act of the Congress of the United States entitled "An Act authorizing the President to reserve public lands and buildings in the Island of Porto Rico for public uses and granting other public lands and buildings to the government of Porto Rico, and for other purposes, "approved July 1, 1902. Section 5. That consent be and is hereby given to the United States to acquire for naval, military or other public purposes, by purchase or condemnation any lands within the Island of Porto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the People of Porto Rico shall cease and determine; Provided, however, that upon the subsequent alienation by the United States of any land so acquired the People of Porto Rico shall again have jurisdiction thereover. Section 6. That exclusive jurisdiction, be and is hereby ceded to the United States over any and all lands that may hereafter be acquired by it in the Island of Porto Rico by purchase or condemnation; and over any and all lands and the shores thereof, including streets and other public highways, conveyed to it by the Governor of Porto Rico under the provisions hereof; and over any and all lands in which any interest or claim of the People of Porto Rico may hereafter be released to the United States by the Governor of Porto Rico as provided herein: Provided however, that in and over any

lands acquired by, or conveyed under the terms hereof to the United States, in the island of Culebra, the People of Porto Rico shall retain a concurrent jurisdiction with the United States over offenses committed within the limits of the lands so conveyed, such jurisdiction however to be exercised only upon the complaint of the officer of the navy or other officer of the United States in charge thereof. Section 7. The Governor of Porto Rico, in his discretion is hereby authorized now or at any time hereafter to revoke or modify any license heretofore or hereafter issued for the sale of liquors or other intoxicating or spirituous beverages, or to revoke or modify any license heretofore or hereafter issued for the sale of merchandise of an objectionable nature, at or near any naval or military station or post now existing or that hereafter may be established in Porto Rico. And he is further authorized to revoke any license heretofore issued or that hereafter may be issued for the sale of such liquors and beverages or of such merchandise within the limits of any lands conveyed hereunder to, or acquired by, the United States. Section 8. This act shall take effect from and after its approval. Approved, February 16th, 1903.

IN THE SUPREME COURT OF PUERTO RICO

Appeal from the
Superior Court,
San Juan Part
No. 12,260
Property Tax

ESSO STANDARD OIL COMPANY
(Puerto Rico),
Plaintiff and *Appellant*,
v.
SECRETARY OF THE TREASURY
OF PUERTO RICO,
Defendant and *Appellee*.

JUDGMENT

San Juan, Puerto Rico, May 17, 1961

For the reasons stated in the opinion renedered today in the case of *Puerto Rico Drydock & Marine Terminals, Inc.* v. *Secretary of the Treasury*, the judgment entered by the Superior Court, San Juan Part, on March 1, 1957, is hereby reversed, and another judgment is entered sustaining the complaint and ordering the reimbursement to the plaintiff of the sum of $30,490.11, with the corresponding legal interest.

It was thus pronounced and ordered by the Court as witness the signature of the Chief Justice. Mr. Associate Justic Belaval dissented and Mr. Associate Justice Santana Becerra took no part.

(s) LUIS NEGRON FERNANDEZ
Chief Justice

I attest: (s) IGNACIO RIVERA
Secretary

IN THE SUPREME COURT OF PUERTO RICO

Appeal from the
Superior Court,
San Juan Part
No. 12006
Property Tax

PUERTO RICO DRYDOCK AND
MARINE TERMINALS, INC.,
Plaintiff, Respondent,

v.

SECRETARY OF THE TREASURY
OF PUERTO RICO,
Respondent, Appellant.

Opinion of the Court delivered by Mr. Justice Perez Pimentel.

San Juan, Puerto Rico, May 17, 1961.

Act No. 77 of May 1, 1941 (Sess. Laws, p. 670) authorized the Governor and the Commissioner of the Interior of Puerto Rico to sell to the United States Government for national-defense purposes, a dry dock and the lands wherein the same is constructed.

In order to facilitate said sale and upon agreement between the United States Navy Department and the Commissioner of the Interior of Puerto Rico, the Government of the United States condemned said property and acquired and accepted the exclusive jurisdiction thereon upon taking possession thereof in the year 1941.

Once the national emergency had ended, the Navy Department leased the afore-mentioned property to Abarca Dry Dock Corporation.[1] Said corporation has been engaged

[1] Afterwards, this Corporation changed its name to "Puerto Rico Dry Dock and Marine Terminals," which now appears as the plaintiff-respondent.

from the time of its organization, to the business of repairing sea vessels, to maritime services in the operation of a floating dock and a dry dock, and to the services of loading and unloading cargo within the property leased to the United States Government.

On January 1, 1952 the lessee was the owner of certain personal property consisting of cash on hand, materials and goods, furniture and fixtures, vessels, machinery and equipment for loading and unloading cargo. All of said property was situated within the lands belonging to the Government of the United States and which had been leased to the Abarca Dry Dock Corporation.

On June 15, 1953 the Secretary of the Treasury notified the lessee corporation of a tax assessment for the fiscal year 1952-53 on the personal property previously described.

The taxpayer appealed to the Superior Court challenging the validity of said assessment on the ground that the property on which the tax was sought to be levied was totally situated outside the tax jurisdiction of the Commonwealth of Puerto Rico, since it was located on land leased by the People of Puerto Rico to the Government of the United States by virtue of legislation enacted to that effect, and that all jurisdiction to levy taxes on real or personal property located in said land had been transferred totally and unconditionally and without restriction to the United States Government.

The Superior Court granted the taxpayer's contention and rendered judgment setting aside the afore-mentioned tax assessment and defendant appeals before us for reversal thereof.

Act. No. 77 of 1941, which authorized the Governor and the Commissioner of the Interior to sell to the Government of the United States the lands wherein the dry dock is located, remains silent as far as jurisdiction is concerned. However, by Act of February 16, 1903, the People

of Puerto Rico gave its consent to the United States to acquire for naval, military or other public purposes, by purchase or condemnation, any lands within the Island of Puerto Rico, and granted exclusive jurisdiction to the United States over any and all lands thus acquired. Said Act provided, however, "that upon the subsequent alienation by the United States of any land so acquired the People of Porto Rico shall again have jurisdiction thereover." It also retained a concurrent jurisdiction with the United States over offenses committed within the limits of the lands of the Island of Culebra, conveyed to the United States.[2]

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[2] Act of February 16, 1903 provides the following in its §§5 and 6:

"Section 5.—That consent be and is hereby given to the United States to acquire for naval, military or other public purposes, by purchase or condemnation any lands within the island of Puerto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the People of Puerto Rico shall cease and terminate; Provided, however, that upon the subsequent alienation by the United States of any lands so acquired the People of Puerto Rico shall again have jurisdiction thereover.

"Section 6.—That exclusive jurisdiction be and is hereby ceded to the United States over any and all lands that may thereafter be acquired by it in the island of Puerto Rico by purchase or condemnation; and over any and all lands and the shores thereof, including streets and other public highways, conveyed to it by the Governor of Puerto Rico under the provisions hereof; and over any and all lands in which any interests or claim of the People of Puerto Rico may hereafter be released to the United States by the Governor of Puerto Rico as provided herein; Provided, however, that in and over any lands acquired by, or conveyed under the terms hereof to the United States, in the island of Culebra, the People of Puerto Rico shall retain a concurrent jurisdiction with the United States over offenses committed within the limits of the lands so conveyed, such jurisdiction however to be exercised only upon the complaint of the officer of the navy or other officer of the United States in charge thereof."

Act No. 2 of November 18, 1953 amended §5 of the Act of 1903 to include the *lease* as one of the means of acquisition whereby the Government of the United States could acquire exclusive jurisdiction

Article I, § 8, clause 17 of the Constitution of the United States grants power to Congress to exercise exclusive jurisdiction over all places purchased with the consent of the Legislature of the State in which the same shall be, for the construction of forts, powder houses, arsenals, docks, and other public buildings. In *Moore* v. *District Court*, 59 P.R.R. 618, this Court decided that said constitutional clause which expressly mentions state legislatures, is not applicable to the organized and unincorporated territory of Puerto Rico,[3] the Act of 1903 being applicable. It was also stated in this case at page 622:

> "As may be seen, the Puerto Rican statute and the constitutional clause above cited coincide in that the jurisdiction of the United States shall be exclusive where the acquisition of land in the States, with the consent of their legislatures, is effected by purchase

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over lands within the Island of Puerto Rico for the purposes stated in said section. (28 L.P.R.A. §45.)

Act No. 63 of June 10, 1955 repealed the above-mentioned §5 of the Act of 1903 (28 L.P.R.A. §45—Cum. Supp. 1956).

Section 3 of the above-mentioned Act No. 63 provides that said jurisdiction shall be understood as cede upon the express conditions that within the lands acquired by the United States arrests originating under the laws of the Commonwealth of Puerto Rico may be made and summonses originating under the said laws may be served, as well as attachments and other judicial provisions . . . with regard to properties located on the said lands, provided that neither the properties of the United States, neither the use nor benefit which the United States derives from the said properties, nor the purposes for which the lands were acquired, are affected.

Section 4 provides that the jurisdiction granted shall continue only while the United States is the proprietor or is in possession of the lands and the lands are used for the naval, military or other public purpose for which they were acquired. In the event the United States ceases to be proprietor of the lands or to be in possession of the same, or in the event that they are not used for the purposes for which they were acquired, the Commonwealth of Puerto Rico shall again have jurisdiction over the same. (28 L.P.R.A. §§56 and 57—Cum. Supp. 1956.)

[3] Since the tax at bar was assessed in January 1952, no issue whatsoever arises regarding the new political status of Puerto Rico.

and for the construction of forts, powder houses, arsenals, docks and other necessary buildings (National Constitution), by purchase or condemnation, for naval, military or other public purposes (Territorial Statute). Therefore, resort can and should be had to the decisions construing the constitutional clause in order to determine the scope of the territorial legal provision."

The exclusive jurisdiction which the Government of the United States acquires by virtue of clause 17 of § 8, Art. I of the Constitution (in Puerto Rico by virtue of the Act of February 16, 1903) exempts from state taxation property thus acquired and property located on these premises, even though the latter belong to private institutions and are not government property. See, *Surplus Trading Co.* v. *Cook*, 281 U.S. 647; *S.R.A.* v. *Minnesota*, 327 U.S. 558; *Yellowstone Park Transp. Co.* v. *Gallatin County*, 31 F.2d 644, *cert. denied* 280 U.S. 555; *City of Franklin* v. *Coleman Bros. Corp.*, 152 F.2d 527; *James* v. *Dravo Contracting Co.*, 302 U.S. 134; *Palmer* v. *Barrett*, 162 U.S. 399; *Benson* v. *United States*, 146 U.S. 325; *Arlington Hotel* v. *Fant*, 278 U.S. 439; *United States* v. *Unzenta*, 281 U.S. 146; *United States* v. *Fall Brooke Public Utility Dist.*, 108 F. Supp. 72; *Wheeling Steel Corp.*, v. *Fox*, 298 U.S. 193.

However, the United States Congress has allowed the States to acquire once more the right to levy taxes within the area belonging to and under the exclusive jurisdiction of the United States. The Act known as the Buck Act enacted on October 9, 1940,[4] returned to the States, Territories and Possessions, the power to levy taxes upon sales of gasoline to individuals within a federal area, sales and use taxes occuring within said areas and income taxes

[4] 54 Stat. 1059, codified on June 30, 1947, 61 Stat. 641; 10 U.S.C. §1270.

on persons residing in the areas where formerly federal jurisdiction had been exclusive for all purpose.[5]

Congress also consented to state taxation by virtue of the Military Leasing Act of August 5, 1947 (61 Stat. 774; in 34 U.S.C., § 522(a) according to which the lease contract was granted in favor of plaintiff respondent.

That Act provides, in its pertinent part, that whenever the Secretary of War or the Secretary of the Navy shall deem it to be advantageous to the Government, he is authorized to lease such real or personal property under the control of his Department . . . and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the National defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary of the Department concerned shall determine that a longer period will promote the National defense or will be in the public interest . . . In any event each such lease shall be revocable by the Secretary of the Department concerned during a National emergency declared by the President.

Section 6 of said statute provides that "the lessee's interest" made or created by virtue of the provisions of this Act shall be subject to a state or local taxation.[6]

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[5] In order to interpret the Buck Act sustaining the power of local taxation on the sale, use and revenue of private interests located within Federal land acquired pursuant to Art. I, §8, Clause 17 of the Constitution and until then under the exclusive jurisdiction of the United States, see: *Sander* v. *Oklahoma Tax Comm.*, 169 P2d 748 (1946), *cert. denied*, 329 U.S. 780; *Minn.* v. *Keeley*, 126 F.2d 863; *Hill* v. *Joseph*, 129 N.Y.S. 2d 348 (1954); *Kiker* v. *City of Philadelphia*, 31 A.2d 289, *cert. denied*, 320 U.S. 741; *Carnegie-Illinois Steel Corp.* v. *Alderson*, 34 S.E.2d 737 (1945), *cert. denied*, 326 U.S. 764; *Howard* v. *Comm. of Sinking Fund of City of Louisville*, 344 U.S. 624, 97 L. Ed. 617; *City of Springfield* v. *Kenney*, 104 N.E.2d 65.

[6] The English text copied verbatim reads:

"Section 6.—The lessee's interest made or created pursuant to the provisions of this Act shall be made subject to a state or local taxation . . ."

The fundamental issue in this appeal turns on the interpretation of the above mentioned § 6 of the Military Leasing Act of 1947, as well as on the scope of the concept "alienation" used in the Act of February 16, 1903.

The Government alleges that (1) under the Military Leasing Act of 1947, Congress consented to state taxation on real and personal property located within the premises leased by the United States under said Act and (2) "that as a consequence of the lease made to respondent, the land was alienated by the Government of the United States and, consequently, by virtue of the provisions of the very Act of February 16, 1903, Puerto Rico again acquired jurisdiction over the premises."

On the other hand, plaintiff-respondent and the "amicus curiae" allege that the taxation authorized by the aforementioned Act of 1947 constitutes taxation on the lessee's interests as lessee over the leased property, that is, that in order that the "lessee's interest" should involve a specific property there should exist a relation of landlord and tenant regarding said property; that the property assessed by the Secretary of the Treasury are personal property belonging to respondent without said property having been leased, nor is there, with respect thereto, any landlord and tenant relation between the United States and the respondent; that the laws of Puerto Rico do not authorize the assessment of tax on the lessehold interest on property.

The Military Leasing Act of 1947 has been subject to interpretation by the state courts as well as by the National Supreme Court.

The parties amply discuss the scope of the decision in the case of *Offutt Housing Co.* v. *Sarpy County*, 351 U.S. 253, 100 L. Ed. 1151. The facts of said case are as follows: Offutt, a Nebraska corporation organized primarily to provide housing for rent or sale, entered into a contract with the Secretary of the Air Force to lease 63 acres of

land and to build a housing project on Offutt Air Force Base in accordance with specifications submitted by the Department of the Air Force, and to be approved by the Federal Housing Commissioner. The lease was for 75 years and the rental of $100 per year. It provided that "the buildings and improvements erected by the lessee, constituting the aforesaid housing project, shall be and become, as completed, real estate and part of the leased land, and public buildings of the United States, leased to lessee . . ." It further provided that upon the expiration of this lease, or earlier termination, all improvements made upon the leased premises shall remain the property of the Government without compensation. The lessee corporation was to lease all the units of the project to such military and civilian personnel at the Base as were designated by the Commanding Officer, on terms specified in the contract and at a maximum rent approved by the Federal Housing Administration and the Air Force. The contract contained other provisions related to the operation of the project regarding public services, insurance, utilities, and regarding the intervention of the Commissioner of the Federal Housing Administration, who would hold the preferred stock of petitioner acting under Title VIII of the National Housing Act. After the signing of the contract, construction proceeded and no tax return was filed, although the Attorney General of Nebraska had ruled that its interest in the project, including all of the personal property used therein, was taxable as "personal property." Sarpy County assessed taxes against petitioner on the furniture, tools, and equipment, household appliances, and improvements on leased land.

The Supreme Court of the United States, in affirming the judgment of the Supreme Court of Nebraska, sustained the lawfulness of taxation and decided that by virtue of the provisions of the Military Leasing Act of 1947, and

the Wherry Military Housing Act of 1947, Congress had consented to such taxation as was involved therein.

The taxpayer argued that the state tax, measured by the full value of the buildings and improvements, is not on the "lessee's interest" but on the full value of property owned by the Government. In relation to this the Court stated that labelling the Government as "the owner" did not foreclose ascertaining the nature of the real interests created, and did not solve the question. It considered that since the lease was for 75 years and the buildings and improvements had an estimated useful life of 35 years, the enjoyment of the entire worth of the buildings and improvements would be petitioner's and that if so, the Government's title would only be a paper title.

The lessee further argued that the tax on the appliances and furniture was invalid because petitioner owned those items, never bought them from the Government, and that therefore its interest was not made or created pursuant to the provisions of the Military Leasing Act of 1947. On this point the Court stated: "Here again using a label, that of 'owner' as descriptive of petitioner does not answer the question. It appears from the record that petitioner was required to supply the appliances for the housing project. Petitioner and its tenants will have full use of them for the lease period and they or their replacements must be left on the property at the end of the lease. Petitioner's interest in the appliances, just like its interest in the buildings, is determined by its agreement with the Government and, keeping in mind the purpose of § 6, we interpret that section as treating these items alike."

In order to determine the scope of the decision in Offutt, it is essential to refer to footnote 2 of said opinion. It reads: "The record does not indicate clearly the relationship of the parties with respect to the furniture—valued at $205 in the total 1952 valuation of the taxable property

at $825,685. This is a minor matter and we leave petitioner to seek redress in the Nebraska courts should the interests of the Government and petitioner in the furniture be significantly different from their interests in the appliances or buildings."

In our opinion the *Offutt* case establishes (a) that the Wherry Act should be read as if it includes § 6 of the Military Leasing Act of 1947, (b) that according to the facts of the case the local tax on lessee's interest may be assessed measured by the full value of the buildings and improvements, and (c) that lessee's interest in the personal property which it was obligated to provide for the housing project, just like his interest in the buildings, is determined by its agreement with the Government and that § 6 treated both items alike.

We do not agree with the Government in that *Offutt* directly decides the issue involved herein. Rather it may be inferred from the opinion delivered in said case, since it does not decide it, that the power of exclusive legislation conferred on Congress to federal areas by Art. I, § 8, Clause 17 of the National Constitution, forecloses state taxation on private property in a military base acquired pursuant to said constitutional provision if said property is not part of the "lessee's interest" made or created by the lease contract.

When the Federal Supreme Court was faced with lessee's allegation to the effect that the tax on appliances and furniture was invalid because said lessee owns those items, never bought them from the Government, and that therefore its interest was not made or created pursuant to the provisions of the Military Leasing Act of 1947, it would have been sufficient for said court, in the event that the Secretary of the Treasury was correct, to dispose of the question by saying that under § 6 of the above-mentioned Military Leasing Act Congress had consented to state taxa-

tion on private personal property located in federal premises leased pursuant to said Act. Far from deciding it thus, the court resorted to the argument that lessees interest in the aforementioned personal property is made in the contract with the Government because lessee was obliged to furnish them and that therefore it was an interest similar to its interest in the buildings.

We infer that in *Offutt*, the validity of the local tax was upheld on the basis that the same was levied on "lessee's interest" made or created pursuant to the Military Leasing Act of 1947.

In some former cases and in subsequent ones, courts have followed the same doctrine as in the *Offutt* case, upholding the validity of local or state tax on "lessee's interest" made or created pursuant to the Military Leasing Act. See, *Meade Heights* v. *State Tax Comm.*, 95 A.2d 280; *Bragg International Co.* v. *Cumberland County*, 96 S.E. 341; *Fort Dix Apartments Corp.* v. *Borough of Wrightstown*, 225 F.2d 473. *Cf. Nellis Housing Corp.* v. *State*, 339 P.2d 758 (1959).

In *International Business Machine Corp.* v. *Vaughn*, 98 So.2d 747 (1957), which cites the *Offutt* case, it was decided that certain electric accounting machines owned by a private enterprise but located on federal land ceded by the State of Florida, were not subject to state or local tax because Florida gave United States Government exclusive jurisdiction without reserving the power of taxation, and neither did Congress consent to it.

In *International Business Machine Corp.* v. *Ott*, 89 So.2d 193 (1956), the State of Louisiana was equally deprived of its tax jurisdiction on personal property belonging to individuals and located on sites ceded to the Government of the United States by said state.

After the *Offutt* case, the National Supreme Court has decided three cases involving state taxation in relation

with federal property. In none of them is the issue at bar decided, since they did not involve state taxation of private property within the boundaries of sites belonging to and under the exclusive jurisdiction of the United States. Besides, in said cases there was a state law which expressly levied the tax challenged.

In one of those cases, *United States* v. *Detroit*, 355 U.S. 466, 2 L. Ed. 424, a Michigan Act provided that when tax-exempt real property is used by a private party in a business conducted for profit, such private party is subject to taxation as though it owned the property. Here the United States was the owner of an industrial plant which was leased to the taxpayer. The statute provided that neither the property nor the owner was liable for the payment of taxes. The Supreme Court upheld the validity of the tax on the ground that the tax was imposed on the privilege of using the property and not on the property itself, even if the value of the property was taken as a measure for the levying of the tax.

In *Detroit* v. *Murray Corp.*, 355 U.S. 489, 2 L. Ed.2d 421, the same Michigan Act was involved. The local tax was assessed on personal property consisting in airplane parts, instruments and materials which were in the possession of a subcontractor and by agreement, title thereof was vested in the United States upon partial payment of the same. Taxation was sustained on the ground that in its effects the tax was similar to that assessed on persons using tax-exempt property. In *United States* v. *Township of Muskegon*, 355 U.S. 484, 2 L. Ed.2d 436, the same basic issue is involved as in the case of *United States* v. *Detroit*, *supra*. The only two differences consist in that the taxpayer was using government property by virtue of a permit, and not of a lease contract and that the taxpayer was using said property in carrying out a contract with the Government.

We are aware that in the *Offutt* case emphasis is given to the fact that the legislative history of the Military Leasing Act indicates the concern of Congress for the loss of revenue to the States and its desire to prevent unfairness toward competitors of the private interests located without federal areas. Likewise, we have observed the tendency of the National Supreme Court to limit, by interpretation, the constitutional tax immunity when it is a matter of a private business conducted for its own private gain. However, we may not interpret the Military Leasing Act of 1947 as if it included the consent of Congress to state taxation of private personal property located in leased federal property, if such consent is not expressed in or inferred from said Act. In order that the "lessee's interest" be subject to state tax, it should be made or created pursuant to the Military Leasing Act as in the *Offutt* case and others. In these cases the lessee had an interest in the lease consisting in the enjoyment of the real and personal property and in which the government also had an interest since it came to own the same when the life of the lease came to an end. The Government's interest in said items was not subject to tax but lessee's interest was because the same use was made or created by virtue of the contract made pursuant to the provisions of the Military Leasing Act.

In the case at bar the tax has been assessed on personal property belonging exclusively to lessee, not acquired by virtue of any obligation imposed upon it by the lease contract, and shall not belong to the United States upon expiration of the lease. The Federal Government is not interested in said items and the lessee's interest in the same has not been made or created pursuant to the provisions of the Military Leasing Act. Consequently, it is appropriate to conclude that pursuant to the provisions of said Act, and the Act of 1903 of Puerto Rico, the afore-

mentioned property is not taxable. In reaching this conclusion we have not considered the scope and effect of Act No. 63 of July 10, 1955, which repealed § 5 of the Act of 1903. See the former footnote 2.

Appellant raised another issue to the effect that the Government of the United States lost its jurisdiction when it leased the lands. Its thesis is grounded in that a "lease" is equivalent to an "alienation" according to the use of this last term in the Act of 1903.[7]

We do not agree. Appellant himself admits that as a general rule, the term "*alienation*" in its narrow sense, does not include lease since "Alienation in its narrow sense, implies the transfer of the ownership of a thing, which undoubtedly did not occur in the present case." According to the Spanish Law, alienation in its broadest sense does not include the lease either. See, *Garcia et al.* v. *Garzot*, 18 P.R.R. 835.

The case of *R. Fabian & Co.* v. *The Registrar*, 22 P.R.R. 744, cited by appellant, decided that a power given to alienate, sell, encumber, mortgage, assign and exchange the real property does not give power to lease. The power of leasing—it was said at p. 745—might perhaps be considered as an act of administration, but no power to administer was given . . ." See *Berrocal* v. *Dist. Court and Fournier, Int.*, 75 P.R.R. 79, 88, and *Perez* v. *Hawayek*, 69 P.R.R. 46.

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[7] The life of the lease was five years with an option for three additional terms of 5 years upon previous written notice to the lessor, 120 days in advance to the expiration of the contract.

The contract provides, besides, that the Secretary of the Navy may terminate the contract at any time before its date of expiration (*a*) during any National emergency declared by the President or by Congress, (*b*) by previous notice written to lessee 90 days in advance when the Secretary determines that national interests so require it, and (*c*) by previous notice to lessee with 10 days in advance if (1) lessee failed to comply with any one of its obligations and did not rectify them within 10 days, . . . and (2) . . . .

IN THE SUPREME COURT OF PUERTO RICO

Appeal from the Superior Court, San Juan Part

12006 Property Tax

PUERTO RICO DRYDOCK & MARINE TERMINALS, INC.,
PLAINTIFF-RESPONDENT

v.

SECRETARY OF THE TREASURY OF PUERTO RICO,
DEFENDANT-APPELLANT

Opinion of the Court delivered by Mr. Justice Blanco Lugo
(On reconsideration)

San Juan, Puerto Rico, June 22, 1962

By Act No. 77 of May 1, 1941 (Sess. Laws, p. 670) the Legislative Assembly of Puerto Rico authorized the Governor and the former Commissioner of the Interior of Puerto Rico to "sell to the United States Government "*for national-defense purposes*" a dry dock constructed by and belonging to the State. No provision was expressly contained therein as to the cession of jurisdiction by the local government in favor of the Federal Government, for which reason we must refer to the provisions of the general law on the subject matter, that is, section 5 of the Act of February 16, 1903 (Sess. Laws, p. 110) which reads as follows:[1]

> "That consent be and is hereby given to the United States to acquire for naval, military or other public purposes, by purchase or condemnation any lands within the island of Porto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the People

[1] The aforesaid section 5 was repealed by section 1 of Act No. 65 of June 10, 1955 (Sess. Laws, p. 228). The cession of jurisdiction over land acquired by the United States was regulated by Act No. 62 of the same date, to which provisions we shall refer hereinafter.

of Porto Rico shall cease and terminate; Provided, however, that upon the subsequent *alienation* by the United States of any land so acquired the People of Porto Rico shall again have jurisdiction thereover."

The facts which give rise to this suit are set forth in the opinion published in 82 P.R.R. 636 (1961), and briefly stated we may say that the plaintiff-respondent Puerto Rico Drydock & Marine Terminals, Inc., as lessee of the dry dock, attacks the jurisdiction of the Commonwealth to assess taxes on a personal property belonging to said plaintiff-respondent which was physically located, on January 1, 1952, within the leased premises, that is, in the dry dock.

1. In fact, the controversy in the present case is reduced to determining whether by virtue of the aforesaid lease the Commonwealth reacquired jurisdiction for the purpose of levying taxes on the property located within the dry dock leased on the ground that it is one of the species of "alienation" mentioned in section 5 of the Act of February 16, 1903, *supra*. In our original opinion, 82 P.R.R. 636, 649, we held that since the term alienation in its strict sense implies a conveyance of ownership, and in its broad sense, in the Spanish law, it does not include a lease, the United States Government had not lost its jurisdiction.[2] It is so indeed if we exclusively apply to the situation the provisions of the civil law and the corresponding sections of the property law.

But as we delve deeper into the problem it seems to us

[2] As stated by the appellant in his memorandum in support of the motion for reconsideration, both litigants induced the court to consider and decide the question of interpretation of the term "to alienate" on the basis of the Spanish text of the Act of 1903. It is in the motion for reconsideration that our attention is called to the fact that in the English text of the Act, which is the one that should prevail, the term "alienation" is used for "*enajenacion*" and that it is to the interpretation of this term that we must look in order to determine the scope of the saving clause made by the People of Puerto Rico when ceding exclusive jurisdiction to the United States over the dry dock.

that its solution does not rest in the exclusive application of those provisions but that other considerations come into play which, within the process of interpretation of the specific section and as a matter of local law, call for a different result. In the first place, the Act of 1903 was signed in the English language by the then Governor William H. Hunt. The Executive Council corresponding to our present Senate was composed of six Continentals[3] and five Puerto Ricans,[4] section 18 of the Organic Act of 1900, known as the Foraker Act, 1 L.P.R.A. pp. 22, 34-35, and this Executive Council exercised legislative functions as one of the two Houses, sections 27 and 31 of said Organic Act, 1 L.P.R.A. pp. 37, and 38-39. We should adhere, therefore, to the meaning of the word "alienation" which was translated into Spanish as "*enajenacion*" and consider the latter subordinate to the meaning of the former. See, *People* v. *Charon*, 7 P.R.R. 416 (1904); *Cruz* v. *Dominguez*, 8 P.R.R. 551 (1905); *People* v. *Torres*, 9 P.R.R. 396 (1905); *People* v. *Agosto*, 10 P.R.R. 425 (1906); *People* v. *Acosta*, 11 P.R.R. 240 (1906); *People* v. *Santiago*, 16 P.R.R. 446 (1910); *Manrique de Lara* v. *The Registrar*, 23 P.R.R. 803 (1916); *People* v. *Baez*, 40 P.R.R. 12 (1929); *People* v. *Noaman*, 46 P.R.R. 700 (1934); *People* v. *Fonseca*, 62 P.R.R. 413 (1943); *People* v. *Diaz*, 62 P.R.R. 477 (1943); *Perez* v. *District Court*, 69 P.R.R. 4 (1948); *People* v. *Zayas*, 72 P.R.R. 17 (1951); cf. *Sein* v. *Gonzalez, et al.*, 26 P.R.R. 164 (1919); *Venegas* v. *District Court*, 41 P.R.R. 469 (1930); *De Castro* v. *Board of Commissioners*, 57 P.R.R. 149 (1940); *Basora* v.

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[3] The Continental members of the Executive Council were Charles Hartzell (Executive Secretary), James S. Harlan (Attorney General), John R. Garrison (Auditor), William F. Willoughby (Treasurer), William H. Elliot (Commissioner of the Interior), and Samuel M. Lindsay (Commissioner of Education).

[4] The Puerto Rican members of the Executive Council were Jose Celso Barbosa, Jose Guzman Benitez, Jose Gomez Brioso, Rosendo Matienzo Cintron, and Andres Crosas.

Padilla, 62 P.R.R. 315 (1943). Even though the term "alienation" ordinarily presupposes a transfer of ownership or encumbrance thereon, such a result does not always prevail and there are American cases—particularly related to leasehold of Indian reservations for the exploitations to determine the existence of natural oil and gas mines—which admit that a lease constitutes an "alienation". See *Eldred* v. *Okmulgee Loan and Trust Co.*, 98 Pac. 929 (Okla. 1908); *Sharp* v. *Lancaster*, 100 Pac. 578 (Okla. 1909); *Barnes* v. *Stonebraker*, 113 Pac. 903 (Okla. 1909); *Duff* v. *Kearton*, 124 Pac. 291 (Okla. 1912); *Barley* v. *King*, 157 Pac. 763 (Okla. 1916); *Mailhot* v. *Turner*, 121 N.W. 804 (Mich. 1909); *Williams* v. *Nolan*, 215 N.Y.Supp. 101 (1926) and 227 N.Y. Supp. 392 (1928). In its broadest sense the term is identified, therefore, with the possession and control over the property. It is unquestionable that in a leasehold it is the lessee who has this control and possession.

Furthermore, on different occasions we have recognized specific effects to the relationship between lessor and lessee which go beyond the mere obligations which produce a purely personal or credit right, and irrespective of the fact that by its registration it might have specifically acquired the nature of a "real" right.* Thus, for condemnation purposes we have protected the right of a lessee whose contract was not recorded in the registry, to participate in the distribution of the money deposited as the fair and reasonable value of the condemned property. In *People* v. *McCormick, etc. Floor, Cor. Co., Int.*, 78 P.R.R. 895, 901 (1956), we referred "To the extent the lease impairs the value of the ownership title, the lessee must be compensated out of the amount which represents the full value of the ownership title, and not in addition thereto," even

*(Transl. note)—This refers to the "derechos reales" of the Civil Law, a juridical concept that does *not* correspond to the "real property rights".

though the contract was not recorded. An in *Galinanes* v. *Superior Court*, 77 P.R.R. 836 (1955), in holding that a lessee could evict a sublessee on the ground that he needed in good faith the subleased premises to enlarge his own business, we stated at p. 841 that:

"In civil law, sublease means the voluntary relinquishment of part of the property right. 'The use or enjoyment is a right inherent in the thing and inseparable therefrom; *it is one of the various rights which make up the ownership*, and therefore belongs to the owner who, precisely for that reason, may dispose of it by onerous or lucrative title, for more or less time, with greater or lesser extension. It is absurd that if the use or enjoyment of a thing is conveyed without consideration, it constitutes a "real" right* of usufruct or use, or habitation, and that it is not so when the conveyance is made in some other way, under another name, or on payment of a specified rental. In either case, in conveying the use or the right the owner dispossesses himself of it, loses it, and delivers it to another. If afterwards he wishes to sell or give in payment the object or thing with all rights inherent therein, he may convey everything that was not conveyed theretofore, not what he already gave, since it is a principle even of common sense that no one can give what he has not, that which is not his, what he himself gave previously to another.' 10 Manresa 467, 468 (5th rev. ed. of the Instituto Editorial Reus, 1950).

"In this commentary, Manresa expresses two concepts which clarify sufficiently the juridical phenomenon found in the lease: (1) that the lease is one of the rights of disposal (*jus disponendi*) of ownership, and,

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* (Transl. note)—This refers to the "derechos reales" of the Civil Law, a jüridical concept that does *not* correspond to the "real property rights".

therefore, one who leases disposes of part of his property right in favor of another person, and (2) that the lease is by nature a property right transmissible in part from one person to another."

See also, by way of comparison, *Berrocal* v. *District Court*, 76 P.R.R. 35 (1954).

Finally, the Legislative Assembly indicated unequivocally its intention to that effect upon approving sections 3 and 4 of Act No. 62 of June 10, 1955 (Sess. Laws, pp. 224, 226) which read as follows:

"Section 3.—The said jurisdiction shall be understood as being granted upon the express condition that within the lands acquired by the United States arrests originating under the laws of the Commonwealth of Puerto Rico may be made and summonses originating under the said laws may be served. Also, attachments and such other judicial provisions as the courts of the Commonwealth may decide upon may be executed with regard to properties located on the said lands, provided that neither the properties of the United States, nor the use or benefit which the United States derives from the said properties, nor the purposes for which the lands were acquired, are affected.

"Section 4.—The jurisdiction granted shall continue only while the United States is the proprietor or is in possession of the lands and the lands are used for the naval, military, or other public purposes for which they were acquired. *In the event that the United States ceases to be the proprietor of the lands or to be in possession of same, or in the event that they are not used for the purposes for which they were acquired*, the Commonwealth of Puerto Rico shall again have jurisdiction over same."

It will be noted that the controlling test of jurisdiction is the ownership or *possession* by the United States of

the land ceded and the continuation of the use thereof for naval or military purposes and other public purposes for which they were acquired. In our opinion we are dealing with an interpretative law[5] in force from the very date of the Act interpreted thereby. As to the explanation of this principle of hermeneutics, see the dissenting opinion of Mr. Justice Belaval in *Gines* v. *Ayala*, decided December 21, 1961, and particularly the references to the commentaries of the textwriter Puig Pena on the matter appearing in Vol. I of Tome I of his *Tratado de Derecho Civil Espanol*, pp. 440-441. Our opinion is buttressed not only by the fact that the approval of the Act was contemporaneous with the date of the judgment rendered in the present case, to which we refer in footnote 5, but also by the fact that the Act which authorized the cession of the dry dock expressly provided that its acquisition by the United States was for "national defense purposes," and that, therefore, the jurisdiction could be understood as being granted upon the condition of compliance with such purpose alone. We can not ignore that the cession of jurisdiction can not be divorced from the purpose for which said jurisdiction is exercised, for there have been other cases where notwithstanding the fact that the property was conveyed to the Federal Government we have still retained local jurisdiction for certain purposes. Cf. *Lopez* v. *District Court*, 58 P.R.R. 117 (1941); *People* v. *Suarez*, 51 P.R.R. 877 (1937). Insofar as the levy of taxes is concerned tax immunity does not exist except in cases of federal property, for we find no justification for extending immunity to a third person who has no immediate relation

[5] The judgment in the case at bar was rendered on May 5, 1955; Senate Bill No. 626 which later became Act No. 62 of 1955 was presented on March 10, 1955, and the Act was finally approved on the following June 10. For the legislative history of this Bill see Journal of Proceedings of 1955, pp. 2122 and 2123 (Report of the Juridical Civil Committee).

with the government in the private exploitation of the dry dock.

2. With respect to the Military Leasing Act, we expressly ratify our holding in our original opinion. The new contentions of the Secretary of the Treasury do not warrant our disturbing the result reached herein. See Keesling, *Property Taxation of Leases and Other Limited Interests*, 47 Cal. L. Rev. 470, 487 (1959).

The motion for reconsideration will be granted and, consequently, the judgment rendered by the Superior Court, San Juan Part, on May 5, 1955, will be reversed.

Yo, ADOLFO PORRATA DORIA, Secretario Auxiliar de Estado del Estado Libre Asociado de Puerto Rico, CERTIFICO: Que las adjuntas cuatro hojas mecanoescritas son una copia fiel y exacta del original manuscrito de la Ley que autoriza al Gobernador de Puerto Rico a traspasar ciertos terrenos a los Estados Unidos para fines navales o militares y para otros fines publicos, aprobada el dia 16 de febrero de 1903.

EN TESTIMONIO DE LO CUAL, *firmo la* presente y estampo en ella el Gran Sello del Estado Libre Asociado de Puerto Rico, hoy dia 23 de enero de mil novecientos sesenta y tres.

(Firmado) ADOLFO PORRATA DORIA
ADOLFO PORRATA DORIA
Secretario Auxiliar de Estado

(Aparece aqui el Sello del Estado Libre Asociado de Puerto Rico)
(Adherido un sello de Rentas Internas)

H. B. 59

LEY

Autorizando al Gobernador de Puerto Rico para traspasar ciertos terrenos a los Estados Unidos para fines navales o militares y para otros fines publicos. Decretase por la Asamblea Legislativa de Puerto Rico: Seccion 1. Que el Gobernador de Puerto Rico sea y es por la presente autorizado para traspasar a los Estados Unidos a su discrecion y a nombre de "El Pueblo de Puerto Rico", para fines y usos navales o militares, u otros usos o fines publicos, todo derecho, titulo de propiedad e interes pertenecientes a "El Pueblo de Puerto Rico", o a cualquiera

municipalidad del mismo, en y sobre cualquiera o todas las tierras publicas en la isla Culebra, juntamente con las riberas o margenes de las mismas, o cualesquiera edificios publicos situados sobre las mismas, o en y sobre aquella parte de ellas, que puedan actualmente o mas tarde desear los Estados Unidos con tales fines, y en y sobre cualesquiera y todos los caminos, calles o caminos reales u otra propiedad publica en dicha isla de Culebra, perteneciente a "El Pueblo de Puerto Rico" o a cualquiera municipalidad del mismo, juntamente con todos los derechos, usos, costumbres, servidumbres, beneficios y privilegios que a aquellas pertenezcan. Seccion 2. Que el Gobernador de Puerto Rico sea y es por la presente autorizado para traspasar a los Estados Unidos, a su discrecion y en nombre de "El Pueblo de Puerto Rico", para fines y usos navales o militaires, u otros usos y fines publicos, todo derecho, titulo de propriedad e interes pertenecientes a "El Pueblo de Puerto Rico" o a la municipalidad de San Juan, en y sobre cualquiera otodas las tierras publicas situadas en la Puntilla, puerto de San Juan, juntamente con las riberas o margenes de las mismas y cualesquiera edificios publicos situados sobre las mismas o en y sobre aquella parte de ellas que puedan actualmente o mas tarde desear los Estados Unidos, con tales fines, y en y sobre cualquiera calle o camino real u otra propriedad publica situada en las mismas pertenecientes a "El Pueblo de Puerto Rico", o a dicha municipalidad, juntamente con todos los derechos, usos, costumbres, servidumbres, beneficios y privilegios que a aquellas pertenezcan. Seccion 3. Que los Estados Unidos o cualquier oficial o agente de los mismos o cualquier contratista encargado en favor de los Estados Unidos, del dragado del puerto de San Juan, esta por la presente autorizado en cualquier tiempo, despues de la promulgacion de esta ley y hasta que la Asamblea Legislativa acordara otra cosa, para usar cualquiera isla situada en el puerto de

San Juan y perteneciente a el Pueblo de Puerto Rico", como lugar de deposito para los dragados y tierras extraidas de dicho puerto, o cualquiera parte de los terrenos adyacentes a ellas, que pertenezcan a el "Pueblo de Puerto Rico", y que, a juicio del Gobernador, pueda usarse debidamente como lugar de deposito; y al llevar a cabo cualesquiera de tales planes de mejora en dicho puerto, los Estados Unidos, o cualquiera de tales oficiales, agentes o contratistas, estan por la presente autorizados para alterar los limites de cualquiera parte de las orillas de dicho puerto, de cualquiera de dichas islas, o para disminuir o acrescentar el area de cualquiera de dichas islas, segun lo requieran tales planes; disponiendose, que todas las tierras que se ganen al mar haciendose los referidos depositos de dragados y tierra del puerto, perteneceran a el "Pueblo de Puerto Rico". Seccion 4. Que el Gobernador en nombre del "Pueblo de Puerto Rico", cualquier derecho o reclamacion que "El Pueblo de Puerto Rico" pueda tener ahora, o en lo futuro pueda adquirir, en y sobre cualesquiera terrenos o edificio pertenecientes a los Estados Unidos en la isla de Puerto Rico, que puedan ser reservados por el Presidente de los Estados Unidos para usos publicos conforme y por virtud del poder revestido en el por los terminos de una Ley del Congreso de los Estados Unidos intitulada: "Ley autorizando al Presidente para reservar tierras y edificios publicos en la Isla de Puerto Rico para usos publicos, y concediendo otras tierras y edificios publicos al Gobierno de Puerto Rico, y con otros fines", aprobada el 1ro. de julio de 1902. Seccion 5. Que se de y por la presente se da, el consentimiento a los Estados Unidos para adquirir para fines navales o militares u otros fines publicos por compra o expropiacion forzosa, cualesquiera terrenos en la isla de Puerto Rico y cuando fuesen adquiridos en esta forma, y los Estados Unidos hayan tomado posesion de los mismos, toda jurisdiccion sobre tales terrenos por parte de "El

Pueblo de Puerto Rico" cesara y terminara ipso facto. Disponiendose no obstante que, si subsecuentemente los Estados Unidos enajenaren cualquiera o todas las tierras adquiridas en esta forma, El Pueblo de Puerto Rico volvera a tener jurisdiccion sobre las mismas. Seccion 6. Que la jurisdiccion exclusiva sea y es por la presente cedida a los Estados Unidos sobre cualquiera y todas las tierras que puedan en adelante adquirir en la Isla de Puerto Rico por compra o expropiacion forzosa; y sobre cualquiera y todas las tierras y riberas o margenes de las mismas incluyendo calles, y otros caminos y vias publicas, traspasados a los Estados Unidos por el Gobernador de Puerto Rico por las disposiciones de esta ley; y sobre cualquiera y todas las tierras en que cualquiera interes, derecho, o reclamacion de "El Pueblo de Puerto Rico" puedan mas tarde ser renunciados en favor de los Estados Unidos por el Gobernador de Puerto Rico, de conformidad con esta ley. Disponiendose, no obstante, que en y sobre cualesquiera tierras adquiridas por los Estados Unidos, o traspasadas a los mismos por los terminos de esta ley, de la isla de Culebra, El Pueblo de Puerto Rico retendra jurisdiccion concurrente con los Estados Unidos sobre ofensas y delitos cometidos dentro de los limites de las tierras asi traspasadas; tal jurisdiccion, no obstante, debera ejercerse solamente cuando se hagan cargos por el oficial de la Marina u otro oficial de los Estados Unidos encargado de las mismas. Seccion 7. El Gobernador de Puerto Rico, a su discrecion, esta autorizado por la presente, ahora o en cualquiera epoca despues de la promulgacion de esta ley, para revocar o modificar cualquiera licencia ya concedida, o que se conceda mas tarde, para la venta de licores u otras bebidas alcoholicas o espirituosas, o para revocar o modificar cualquiera licencia ya concedida, o que se conceda mas tarde, para la venta de mercancias de caracter pernicioso en o cerca de cualquiera estacion o puesto naval o

militar que exista actualmente o que pueda luego establecerse en Puerto Rico. Y el Gobernador esta ademas autorizado para revocar cualquiera licencia ya concedida, o que pueda luego concederse, para la venta de tales licores y bevidas o de tales mercancias, dentro de los limites de cualesquiera tierras traspasadas de conformidad con esta Ley a los Estados Unidos, o adquiridas por los mismos. Seccion 8. Esta ley empezara a regir tan pronto como sea aprobada.

FDO. MANUEL F. ROSSY
Presidente de la Camaro de Delegados

FDO. ANDRES CROSAS
Presidente Pro Tem of the Executive Council

Office-Supreme Court, U.S.
FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1048

THE TEXAS COMPANY (P.R.) INC.,
(TEXACO PUERTO RICO, INC.),
ESSO STANDARD OIL COMPANY (P.R.) AND
ESSO STANDARD S. A. LTD.,
Petitioners,

v.

THE SECRETARY OF THE TREASURY
OF PUERTO RICO,
Respondent.

MOTION TO DISMISS

J. B. FERNANDEZ BADILLO
Solicitor General
IRENE CURBELO
Assistant Solicitor General
Department of Justice
San Juan, Puerto Rico

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THE TEXAS COMPANY (P.R.) INC.,
(TEXACO PUERTO RICO, INC.),
ESSO STANDARD OIL COMPANY (P.R.) AND
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Petitioners,

v.

THE SECRETARY OF THE TREASURY
OF PUERTO RICO,
Respondent.

MOTION TO DISMISS

TO THE HONORABLE COURT:

Now comes appellee, The Secretary of the Treasury of Puerto Rico, represented by the undersigned attorneys, and respectfully submits the following Motion to Dismiss pursuant to Rule 16 of the Rules of the Supreme Court of the United States.

Statement of Facts

In 1942, the United States Government acquired in Catano, Puerto Rico, through expropriation proceedings, a tract of land for the construction of fuel storage facilities in connection with the Tenth Naval District in San Juan, Puerto Rico.[1]

In July 1947, the Secretary of Navy leased the land to appellants by virtue of a contract of Use and Occupancy, supplemented in March 1948, which essentially provided that for a sum stipulated, the appellants could use, occupy and improve the land and facilities thereon for 20 years with the right to renew the contract for an additional 10 years.[2]

For the tax years in controversy, the Government of Puerto Rico levied an ad valorem property tax on personal property of appellants located within the leased premises. The appellants filed suit in the Superior Court of Puerto Rico challenging the imposition of these taxes for the reason that the property taxed was located on land over which the United States Government exercised exclusive jurisdiction and could not, therefore, be subjected to the taxing laws of Puerto Rico.[3]

The Superior Court dismissed the complaint, on the authority of *Puerto Rico Drydock & Marine Terminals, Inc.* v. *Secretary of the Treasury of Puerto Rico*, decision rendered June 22, 1962 on reconsideration.[4]

In that case,[5] the Supreme Court of Puerto Rico had decided that by virtue of Section 5 of the Law of the Legislature of Puerto Rico of February 16, 1903 the United

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[1] Appellants' App., page 24.

[2] Appellants' App., pg. 40.

[3] Complaint, Record on Appeal, pg. 1.

[4] Judgment, Record on Appeal, pg. 5.

[5] Appellants' App., pg. 77.

States could lose exclusive jurisdiction over land by leasing it. The law of 1903 constitutes a waiver by the local government of its jurisdiction over land acquired by the United States by purchase or expropriation for naval, military or other public purposes and provides that upon the subsequent *alienation* by the United States of any land so acquired, the People of Puerto Rico shall again have jurisdiction thereof. The Supreme Court decided that the Law should be interpreted according to its English text and that the leasing of property constituted an "alienation" of the same, i.e., the loss of possession and control over it. Consequently, once exclusive jurisdiction was lost by the United States tax immunity did not exist in the area concerned except with respect to federal property.[6]

The appellants then moved the Superior Court to reconsider its decision asserting that the Supreme Court of Puerto Rico had erred in interpreting the Law of 1903 in the *Drydock* case because, since the Law of 1903 was presented to the Legislature in the English and Spanish texts simultaneously, according to article 13 of the Civil Code of Puerto Rico, the Spanish text should prevail. The Spanish equivalent of alienation, that is, "enajenacion", they argued, did not encompass a lease according to civil law theory.[7] The Superior Court denied the motion for reconsideration.[8]

The appellants then sought review of this decision in the Supreme Court of Puerto Rico, as pertinent to our con-

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[6] The oft mentioned case of *The Secretary of the Treasury of Puerto Rico* v. *Esso Standard Oil Co. (P.R.) Et al.* No. 6101, pending decision before the United States Court of Appeals for the First Circuit, was decided on the authority of the first decision handed down by the Supreme Court of Puerto Rico in the *Drydock* case on May 17, 1961 and appealed in the interval between that decision and its decision in reconsideration of June 22, 1962.

[7] Record on Appeal, pg. 8.

[8] Record on Appeal, pg. 21.

sideration, on the same grounds set forth in the motion for reconsideration presented in the Superior Court, that is, on the issue of the correct interpretation to be accorded to the Law of 1903, which, as they had throughout accepted, ruled the decision in the case.[9] The Supreme Court of Puerto Rico denied the petition for review without an opinion.[10]

Then, for the first time, on reconsideration of this decision the appellants assailed the constitutionality of the Law of 1903 as being repugnant to the territorial clause of the Constitution of the United States.[11] The Supreme Court of Puerto Rico denied reconsideration without an opinion.[12]

The questions presented by this appeal are the following:

1. Was the due process clause of the Constitution of the United States violated because the Supreme Court of Puerto Rico allegedly disregarded article 13 of the Civil Code of Puerto Rico in arriving at its interpretation of the Law of 1903?

2. Is the Law of 1903 repugnant to the territorial clause of the Constitution of the United States?

3. Did the Federal Government consent to the imposition and collection of the tax in controversy by the local government?

Jurisdiction

Review is sought pursuant to 28 USCA 1258 (2). We respectfully submit that this Honorable Court does not have

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[9] Record on Appeal, pg. 70.

[10] Appellants' App., pg. 22.

[11] Art. IV, Sec. 3, cl. 2: "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the territory or other property belonging to the United States; . . ."

[12] Appellants' App. pg. 23.

jurisdiction to review the questions presented either pursuant to 28 USCA 1258 (2) or 1258 (3), i.e., by writ of certiorari, because the issues upon which appellants rest, were either not presented to or passed upon by the local courts or were not presented seasonably.

Argument

In its interpretation of 28 USCA 1257 this Honorable Court has established certain general principles concerning its appellate jurisdiction. Since sections 1258 and 1257 are similarly worded these principles apply by analogy to the case at bar.[13]

The record in this case does not disclose that the appellants asserted the first issue outlined above at any time in the course of the proceedings in the local courts. The claim that the Supreme Court of Puerto Rico violated due process of law by disregarding article 13 of the Civil Code of Puerto Rico in arriving at its interpretation of the Law of February 16, 1903 is being formulated for the first time in appellants' statement of questions presented by the appeal. The appellants had ample opportunity to present their claim before the local courts since the interpretation complained of was rendered on June 22, 1962 in the above mentioned *Drydock* case, months before the Superior Court handed down its decision in the instant case.[14] This Honorable Court is not free to consider this issue for the reason that it was never presented to, or passed upon, by the courts of Puerto Rico.[15]

The second issue, concerning the constitutionality of the Law of 1903, was presented for the first time in a Motion

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[13] See also Rule 16 (1) of the Supreme Court Rules.

[14] *Saunders* v. *Shaw*, 244 U.S. 317.

[15] *Wilson* v. *Cook*, 327 U.S. 474, 483-484, and cases therein cited; *American Surety Co.* v. *Baldwin*, 287 U.S. 156, 163.

for Reconsideration before the Supreme Court of Puerto Rico after the court had denied a petition for review. Reconsideration was denied without an opinion.[16] It is a long standing principle of appellate procedure in this Honorable Court that, under these circumstances, review must be denied.[17]

"The settled rule is that in order to give us jurisdiction to review the judgment of a state court upon writ of error, the essential federal question must have been especially set up there at the proper time and in the proper manner; and further, that if first presented in a petition for rehearing, it comes too late unless the court actually entertains the petition and passes upon the point." [18]

It is argued that in not entertaining the motion for reconsideration the Supreme Court of Puerto Rico purposely defeated the federal right claimed.[19]

We respectfully submit that appellants defeated their own right by not raising the question seasonably.

The Supreme Court of Puerto Rico had no obligation to entertain the petition for reconsideration and no federal rights were violated by its refusing to do so.[20] If proffered as a basis for appeal, the motion for reconsideration came too late, for the 30 day appeal period had elapsed. As a plea for reconsideration of the order denying the writ of review, it also came too late for it contained new issues which the Supreme Court of Puerto Rico has consistently

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[16] If constitutional issues were involved in this case from the beginning, as alleged by appellants, (Jurisdictional Statement, p. 9) they were never pointed out either "expressly or by clear intendment". *New York ex rel Bryant* v. *Zimmerman*, 278 U.S. 63, 67.

[17] *Hanson* v. *Denkla*, 357 U.S. 235, *Radio Station WOW* v. *Johnson*, 326 U.S. 120; *American Surety Co.* v. *Baldwin*, 287 U.S. 156; *Godchaux Co.* v. *Estopinal*, 251 U.S. 180; *Simmerman* v. *Nebraska*, 116 U.S. 54.

[18] *Godchaux Co.* v. *Estopinal*, ibid, p. 181.

[19] *Hartford Life Ins. Co.* v. *Johnson*, 249 U.S. 490.

[20] *John* v. *Paulin*, 231 U.S. 583.

refused to entertain on reconsideration.[21] It is obvious that the Supreme Court of Puerto Rico did not refuse to exercise its discretion to reconsider in a "spirit of evasion".

The third issue raised is not a claim which will sustain appellants' plea for reversal and therefore is not a basis for review. It is an issue which this Honorable Court would have to consider only in the event that appellants should prevail in either of the other objections formulated.

Substantiality of Questions Presented

Appellee moves to dismiss on the additional ground that the questions presented are so unsubstantial as not to need further argument.

Argument

The Appellants contend that solely through the exercise of the power of eminent domain in 1942, when Puerto Rico was a territory subject to the legislative authority of the Congress, the United States acquired exclusive jurisdiction over the land in controversy. Consequently, it is argued, the Act of the Legislature of Puerto Rico approved on February 16, 1903 granting exclusive jurisdiction to the United States over land purchased or condemned for naval, military or other public purposes and providing that upon the subsequent alienation of the land acquired, Puerto Rico would again have jurisdiction thereover, is unnecessary, unconstitutional and void and cannot be resorted to for the decision of these cases.

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[21] *Monzoreau* v. *Amador*, 40 PRR 124; *Sauri* v. *Sauri*, 39 PRR 810; *Villar & Co.* v. *Conde*, 38 PRR 13; *Ramos* v. *Sucn. Serralles*, 51 PRR 332; *Boerman* v. *Heirs de Boerman*, 53 PRR 211; *Ferrari* v. *American Railroad Co.*, 39 PRR 44.

Jurisdiction, i.e., the power to pass laws having force or effect over persons or property, inheres in the exercise of legislative authority. The power to legislate, in turn, inheres in any organized political community. When first acquired by the United States, the Territories as a rule lacked a political structure of any sort or at least, a structure such as that envisioned by the Constitution and so, the power necessary to govern the people and property in the territories was, by the Constitution, deposited in the hands of Congress.[22] So long as Congress remained the only political authority in the Territory, its jurisdiction was exclusive.

On the other hand, the framers of the Constitution never contemplated that the Territories should remain unorganized or that their lands and people should inure to the benefit or aggrandizement of the federal government. And so, as soon as practicable, Congress has always created a territorial government and delegated its legislative authority to it. After having done so, the jurisdiction enjoyed by Congress was no longer exclusive, but became concurrent with that of the territorial or local government.[23]

Puerto Rico has enjoyed a government with powers similar to those of the States since the Organic Act of 1900.[24] It has, therefore, since that time exercised concurrent jurisdiction with Congress over all the land within its territory.[25] How then, may the United States acquire exclusive jurisdiction over land in Puerto Rico?

Congress would either have to withdraw the land from

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[22] Clause 2, Section 3, Article IV of the Constitution of the United States.

[23] *Charles Watts* v. *U.S.*, 1870, 1 Wash. Terr. Reports 288.

[24] *People of Puerto Rico* v. *The Shell Co.*, 302 U.S. 252, 261-262.

[25] There is no need to consider here the effect of the Commonwealth status acquired in 1952, since the controversy refers to the time during "pre-Commonwealth" Puerto Rico.

the jurisdiction of the local government pursuant to the exercise of its superior legislative authority, or obtain from the local authorities a waiver of jurisdiction. Either one of these alternatives calls for the exercise of legislative judgment. By contrast, the exercise of the power of eminent domain by the United States Government is not in and of itself the Act of Congress and therefore, cannot affect the distribution of jurisdiction or otherwise determine jurisdictional rights. Condemnation is a means of obtaining title only.[26] Nowhere do we find that condemnation in and of itself transfers jurisdiction. On the contrary, Congress, as evidenced by the Act of June 28, 1930, C. 710, 46 Stat. 828, as amended, 40 USC 255, has expressed its desire not to be burdened unnecessarily with the obligations of exclusive jurisdiction. The Act provides as follows:

> "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the state in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the

[26] *James* v. *Dravo Contracting Co.*, 302 U.S. 134.

State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

As far as the property in controversy is concerned, Congress has never acted to withdraw it from the jurisdiction of the local government. The Federal laws which authorized the expropriation of these lands did not provide with regard to jurisdiction. *Public Law 241, 77th Congress, 55 Stat. Chap. 395* authorizes the Secretary of the Navy to acquire the land necessary to construct certain named facilities in different parts of the defense area. As pertinent to our case, it constitutes an authorization to construct fleet-fuel and storage facilities in the 10th Naval District and to acquire the land necessary therefor. *Public Law 247, 77th Congress, 55 Stat. Chap. 409* is an appropriation measure allotting the sum of money necessary to build the fuel and storage facilities authorized by Public Law 241. *25 Stat. 357, 40 USC 257* constitutes an authorization to the Secretary of the Treasury or other government officials to institute proceedings for the condemnation of land where its acquirement has otherwise been authorized. *46 Stat. 1421, 40 USC 258 (a)* outlines the procedural requirements and the effects of the condemnation on property rights. Not one of these provisions purports to regulate or declare anything with respect to legislative jurisdiction over the condemned property.

In the absence of an express declaration by Congress to the contrary, exclusive jurisdiction was acquired by the United States over the land in controversy by virtue of the Act of the Legislature of Puerto Rico of 1903 and should stand as valid law. This is particularly justified in view of the fact that Congress did not see fit to exercise its power

to annul local legislation in this instance.[27] By not doing so, Congress implicitly recognized the validity and necessity of the local Act.[28] There can be no constitutional objection to the condition imposed by the Act of 1903 relative to the effects of the subsequent alienation of the land by the United States, for it is not inconsistent with the carrying out of the purposes of the acquisition.[29]

Summarizing, then, it appears that by delegating its legislative authority, Congress empowered the Government of Puerto Rico to exercise concurrent jurisdiction over the land in controversy. Exclusive jurisdiction could only be regained by the United States by an express act of Congress excluding the property from the jurisdiction of the local government or by the consent of the local legislative authority. Congress has never acted to withdraw the land in controversy from the jurisdiction of the local government and the expropriation proceedings, not having been in and of themselves, the act of Congress, could not effectuate such a transfer of jurisdiction. The law approved by the Legislature of Puerto Rico on February 16, 1903, then, constituted until 1955, when Law No. 62 was approved by this same body, the basis for the acquisition of exclusive jurisdiction by the United States over lands which it purchased and condemned in Puerto Rico and the condition contained therein to the effect that jurisdiction would revert to Puerto Rico in the event that the property were subsequently alienated by the United States, was valid and operative and must be resorted to for the decision of these cases.

Appellants question the soundness of the opinion ren-

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[27] Sec. 31 of the Foraker Act, 31 Stat. Chap. 191 and sec. 57 of the Jones Act, 39 Stat. Chap. 145.

[28] *Atchison, etc.* v. *Sowers*, 1909, 213 U.S. 55; *Soltero* v. *Descartes*, 192 F.2d. 755.

[29] *James* v. *Dravo Contracting Co.*, supra and cases cited therein.

dered on Reconsideration by the Supreme Court of Puerto Rico in the *Puerto Rico Drydock* case for the reason that the Law of February 16, 1903 should be interpreted according to its Spanish text and the meaning accorded by the Civil Law to "enajenacion" should control in this case. It is contended that since there exists a discrepancy between the English and Spanish texts of the law and the matter of preference cannot be decided according to the rules set forth in section 13 of the Civil Code, 31 LPRA 13, as provided by the last paragraph of that same section, the Spanish text should prevail.

The argument is not well founded. The Appellants have brought to the attention of this Honorable Court, not copies of the original bills introduced into the House but, as certified to by the Assistant Secretary of State, copies of the "original handwritten Act authorizing the Governor of Puerto Rico to convey certain lands to the United States for Naval, Military and other public purposes, approved on February 16, 1903".[30] The Act appears in both the Spanish and English languages pursuant to section 45 of the Political Code of Puerto Rico,[31] which states as follows:

> "The Secretary of Porto Rico shall at the close of each session of the Legislative Assembly, collate and cause to be printed, in Spanish and English all the Acts and resolutions passed during the session together with the Organic Act and the Act and Resolutions of Congress amendatory thereof, and such other public laws as he may deem appropriate . . ."

In any case, section 13 of the Civil Code, which was promulgated in 1917 does not apply to a law passed in 1903

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[30] Appellants' App., pg. 58 and 85.

[31] Revised Statutes and Codes of Puerto Rico, 1902, pg. 312.

for it constitutes a general interpretive law [as distinguished from a special interpretive law,] with prospective effect only.[32] The principle governing statutory construction in Puerto Rico prior to 1917 was to the effect that since the English text of a law was the one signed by the Governor, it prevailed in case of discrepancy between the English and Spanish texts of statutes.[33]

Summarizing then, Article 13 of the Civil Code of Puerto Rico is not applicable to the present case because (1) it has prospective effect only and cannot control the interpretation of a law passed before its promulgation in 1917, and (2) the assertion that the Law of 1903 was introduced in the House of Delegates in both the English and Spanish texts is erroneous. It is quite understandable that the Supreme Court of P. R. should have disregarded a statute which was not relevant to its decision. Obviously no rights under the due process clause of the Constitution have been violated.

For the reasons set forth above, we respectfully move this Honorable Court to dismiss this appeal.

San Juan, Puerto Rico, May 18, 1964.

(s) J. B. FERNANDEZ BADILLO
J. B. FERNANDEZ BADILLO
Solicitor General
IRENE CURBELO
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San Juan, Puerto Rico

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[32] Sutherland, *Statutory Construction*, 3 Ed., Vol. 2, Sec. 3003; Dissenting Opinion Mr. Justice Belaval, *Gines* v. *Ayala*, 84 DPR 245; Puig Peña, Tratado de Derecho Civil Espanol, Tome I, Vol. I, pp. 440-441.

[33] *People* v. *Charon*, 7 PRR 416; *Cruz* v. *Dominguez*, 8 PRR 551; *People* v. *Torres*, 9 PRR 396.